Defined Contribution Pre-Approved Plans
Listing of Required Modifications and Information Package (LRM)
Revised January 2024

To Providers of Pre-approved Plans:

This Information Package contains samples of plan provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code, taking into account changes in the plan qualification requirements, regulations, revenue rulings, and other guidance in the 2023 Cumulative List of Changes in Plan Qualification Requirements, Notice 2024-3, 2024-2 I.R.B. 338, including changes enacted by the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, the Setting Every Community Up For Retirement Enhancement ("SECURE") Act of 2019, Pub. L. 116-94, and Division T of the Consolidated Appropriations Act, 2023, known as the SECURE 2.0 Act of 2022, Pub. L. 117-328, where appropriate. Such language may or may not be acceptable in different plans depending on the context in which used. For example, some language may not be required in a non-electing church plan or government plan. We have prepared this package to assist Providers who are drafting or redrafting plans to conform to applicable law and regulations, and we hope that it will be a key factor in enabling us to process and approve Pre-approved Plans more quickly.

Rev. Proc. 2023-37, 2023-51 I.R.B. 1491, permits a Pre-approved Plan to use either of two formats: a single plan document or a basic plan document with an adoption agreement. See section 4.01(14) therein. This LRM reflects the latter format but recognizes that the former is also acceptable.

Plan provisions contained in this information package are arranged in three parts. Part I contains provisions generally applicable to all plans, Part II contains those provisions applicable to Standardized plans and Part III contains those applicable to Nonstandardized plans.

In addition to the provisions listed in Part II, Section 9.03 of Rev. Proc. 2023-37 identifies certain plan provisions in Part I, otherwise applicable to all Pre-approved Plans, that must be used for Standardized plans. These provisions are in LRM #6 (requiring a Standardized plan to use full compensation); LRMs #24, #25, #28 and #29 (all of which generally require a standardized plan to provide for a contribution allocation for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year); LRM #50 (a Standardized plan must make all optional benefit forms currently available to non-highly compensated employees); and LRM #83 (a Standardized plan must credit all service with predecessor employers or by granting credit for any prior service performed that meets the safe harbor at Reg.

§ 1.401(a)(4)-5(a)(3)).

In addition to the provisions listed in Part III, certain provisions of the LRMs may be modified for Nonstandardized plans. See generally Section 5.15 of Rev. Proc. 2023-37. These provisions are in LRMs # 7, #12 and #13 (these sections contain sample plan language that may be omitted in a Nonstandardized plan that precludes participation by self-employed individuals); LRM #22 (a nonstandardized plan can utilize the one-year holdout rule of IRC § 410(a)(5)(C)); and LRMs #24, #25, #28 and #29 (all of which provide that a Nonstandardized plan can generally provide an option to require a participant to be employed on the last day of the plan year and/or complete up to 1,000 hours of service during the plan year as a condition to receive an employer contribution).

Also, a money purchase plan may be combined with a profit-sharing plan (with or without a qualified cash or deferred arrangement (CODA) in the same Pre-approved Plan document. A Nonstandardized plan that contains employee stock ownership plan (ESOP) provisions may also include a qualified CODA. See sections 14.06 and 14.07 of Rev. Proc. 2023-37.

Certain capitalized terms used throughout this LRM have meanings which are defined in section 4 of Rev. Proc. 2021-37.

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PART I - ALL PLANS

DEFINITIONS

1. Definition of year of service

Statement of Requirement: **Code §§ 410(a)(3)(A), 411(a)(5)(A)**

Sample Plan Language: A year of service is a 12-consecutive month period (computation period) during which the employee completes at least 1,000 hours of service.

(Note to reviewer: Computation periods may vary for eligibility and vesting purposes. See LRMs #19 and #20.)

(Note to reviewer: Minimum participation standards requiring completion of 1,000 hours of service to be credited with a year of service for eligibility are reduced to 500 hours for purposes of establishing eligibility for elective deferrals for years beginning after December 31, 2022, for certain 'long-term, part-time employees.' See Section 112 of the SECURE Act. See also CODA LRM II for sample plan language in this regard.)

2. Definition of break in service

Statement of Requirement: **DOL Reg. § 2530.200b-4(a)(1)**

Sample Plan Language: Break in service will mean a 12-consecutive month period (computation period) during which the participant does not complete more than 500 hours of service with the employer.

(Note to reviewer: Computation periods may vary for eligibility and vesting purposes. See LRMs #19, #20 and #52.)

(Note to reviewer: Minimum participation standards requiring completion of 1,000 hours of service to be credited with a year of service for eligibility are reduced to 500 hours for purposes of establishing eligibility for elective deferrals for years beginning after December 31, 2020. See Section 112 of the SECURE Act. Section 125 of the SECURE 2.0 Act requires two consecutive years of 500-hour credited service for CODA eligibility for long-term part-time employees. CODA eligibility for this purpose includes rules for determining when and if an employee has a break in service for eligibility determinations. See CODA LRM II for CODA eligibility requirements in this regard.)

3. Definition of hour of service

Statement of Requirement: **DOL Reg. §§ 2530.200b-2, 2530.200b-3; Code §§ 410(a)(5)(E), 411(a)(6)(E); Rev. Proc. 2023-37, sec. 9.03(1)**

Sample Plan Language:

Hour of service means:

(1) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer. These hours will be credited to the employee for the computation period in which the duties are performed; and

(2) Each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and

(3) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the employer. The same hours of service will not be credited both under paragraph (1) or paragraph (2), as the case may be, and under this paragraph (3). These hours will be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(4) Hours of service will be credited for employment with other members of an affiliated service group (under section 414(m)), a controlled group of corporations (under section 414(b)), or a group of trades or businesses under common control (under section 414(c)) of which the adopting employer is a member, and any other entity required to be aggregated with the employer pursuant to section 414(o). Hours of service will also be credited for any individual considered an employee for purposes of this plan under section 414(n).

(5) Solely for purposes of determining whether a break in service, as defined in section _____ (INSERT PLAN SECTION CORRESPONDING TO THE PLAN SECTION DEFINING A BREAK IN SERVICE) for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the hours of service which would

otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, 8 hours of service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of a birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement. Hours of service credited under this paragraph shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a break in service in that period, or in all other cases, in the following computation period, but in no instance more than 501 hours.

(**Optional:** Service will be determined on the basis of the method selected in the adoption agreement.)

Sample Adoption Agreement Language: (If preceding paragraph is used in the plan language)

Service will be determined on the basis of the method selected below. Only one method may be selected. The method selected will be applied to all employees covered under the plan.

( ) On the basis of actual hours for which an employee is paid or entitled to payment.

( ) On the basis of days worked. An employee will be credited with ten (10) hours of service if under section _____ of the plan such employee would be credited with at least one (1) hour of service during the day.

( ) On the basis of weeks worked. An employee will be credited with forty-five (45) hours of service if under section _____ of the plan such employee would be credited with at least one (1) hour of service during the week.

( ) On the basis of semi-monthly payroll periods. An employee will be credited with ninety-five (95) hours of service if under section _____ of the plan such employee would be credited with at least one (1) hour of service during the semi-monthly payroll period.

( ) On the basis of months worked. An employee will be credited with one hundred ninety (190) hours of service if under section _____ of the plan such employee would be credited with at least one (1) hour of service during the month.

(Note to reviewer: The blanks should be filled in with the plan section number that contains the definition of hour of service.)

( ) On the basis of elapsed time, as provided for in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #4.)

4. Elapsed time

Statement of Requirement: **Reg. §§ 1.410(a)-7, 1.410(a)-9T**

Sample Plan Language:

(Note to reviewer: Use of elapsed time eliminates or simplifies several plan provisions that would otherwise be required if hours of service are counted. The following definitions should replace the otherwise required year of service, break in service, and hour of service definitions.)

For purposes of determining an employee's initial or continued eligibility to participate in the plan or the nonforfeitable interest in the participant's account balance derived from employer contributions, (except for periods of service which may be disregarded on account of the "rule of parity" described in section _____) an employee will receive credit for the aggregate of all time period(s) commencing with the employee's first day of employment or reemployment and ending on the date a break in service begins. The first day of employment or reemployment is the first day the employee performs an hour of service. An employee will also receive credit for any period of severance of less than 12 consecutive months. Fractional periods of a year will be expressed in terms of days.

(Note to reviewer: Wording in parenthesis applies only in plans which utilize the rule of parity. See LRMs #21 and #57.)

For purposes of this section, hour of service shall mean each hour for which an employee is paid or entitled to payment for the performance of duties for the employer.

Break in service is a period of severance of at least 12 consecutive months.

Period of severance is a continuous period of time during which the employee is not employed by the employer. Such period begins on the date the employee retires, quits or is discharged, or if earlier, the 12-month anniversary of the date on which the employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a break in service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption

of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Each employee will share in employer contributions for the period beginning on the date the employee commences participation under the plan and ending on the date on which such employee severs employment with the employer or is no longer a member of an eligible class of employees.

If the employer is a member of an affiliated service group (under section 414(m)), a controlled group of corporations (under section 414(b)), a group of trades or businesses under common control (under section 414(c)) or any other entity required to be aggregated with the employer pursuant to section 414(o), service will be credited for any employment for any period of time for any other member of such group. Service will also be credited for any individual required under section 414(n) to be considered an employee of any employer aggregated under sections 414(b), (c), (m) or (o).

(Note to reviewer: Minimum participation standards requiring completion of 1,000 hours of service to be credited with a year of service for eligibility are reduced to 500 hours for purposes of establishing eligibility for elective deferrals for years beginning after December 31, 2020. See Section 112 of the SECURE Act of 2019 and Section 125 of the SECURE 2.0 Act of 2022. If a plan uses the elapsed time method for eligibility service crediting, the long-time part-time rules do not apply. Therefore, an employee, including an employee who is classified as a part-time employee, cannot be required to complete more than a 1-year period of service under the elapsed time method to be eligible to participate in a qualified CODA. See Section 112 of the SECURE Act. See also CODA LRM II for additional information.)

5. Definition of plan year

Statement of Requirement: **29 U.S.C. § 1002(39); Reg. §1.415(j)-1; Rev. Rul. 89-13, 1989-1 C.B. 112**

Sample Plan Language:

Plan year means the calendar year unless a different plan year is designated by the employer in the adoption agreement.

Sample Adoption Agreement Language:

Plan year will mean:

( ) the 12-consecutive month period which coincides with the limitation year.

( ) the 12-consecutive month period ending on _____ and each anniversary

thereof.

6. Definition of compensation

Statement of Requirement: **Code §§ 414(s), 401(a)(17), 415(c)(3); Reg. §§ 1.401(a)(4)-12, 1.401(a)(17)-1, 1.414(s)-1, 1.415(c)-2; Rev. Proc. 2023-37, secs. 9.03(3) & 12.02(4); Notice 2010-15, 2010-6 I.R.B. 390; Notice 2020-68**

(Note to reviewer: Standardized Pre-approved Plans that include nonelective employer contributions must define compensation, for allocation purposes, as total compensation. Total compensation means a definition of compensation that includes all compensation within the meaning of Code § 415(c)(3) or compensation that otherwise satisfies Code § 414(s) and Reg. § 1.414(s)-1(c).

Nonstandardized Pre-approved Plans may allow the employer to elect an alternative definition of compensation, provided that, for purposes of determining the amount of nonelective employer contributions, compensation is limited pursuant to Code § 401(a)(17). A Nonstandardized Pre-approved Plan may, but is not required to, use any of the definitions of compensation below.)

Sample Plan Language:

Compensation will mean compensation as that term is defined in section ____ of the plan. For any self-employed individual covered under the plan, compensation will mean earned income. Except as provided elsewhere in this plan, compensation shall include only that compensation which is actually paid to the participant during the determination period, and the determination period shall be the period elected by the employer in the adoption agreement. If the employer makes no election, the determination period shall be the plan year.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B of the sample adoption agreement language at the end of LRM #31.)

(Note to reviewer: Under certain circumstances, other definitions of compensation may be used. However, compensation in Standardized plans and in determining top-heavy minimums must use one of the definitions provided in section 4.2 of LRM #31. For purposes of the preceding sentence, the safe harbor alternative definition of compensation contained in Reg. § 1.414(s)-1(c)(3) may also be used. A plan will not fail to be a Standardized plan if it uses a definition of compensation approved for Standardized plans but excludes from that definition differential wage payments under § 3401(h). See Notice 2010-15, Q&A-10.

All Standardized plans require the employer to elect one of the definitions of compensation provided in section 4.2 of LRM #31 in the adoption agreement. Each Nonstandardized Plan may provide the Adopting Employer the option to select total compensation as the compensation to be used in determining allocations or benefits. See also LRMs #62, #89 and #93.)

Notwithstanding the above, if elected by the employer in the adoption agreement, compensation shall not include any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of the employee under sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

The annual compensation of each participant taken into account in determining allocations shall not exceed $330,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code for periods after January 1, 2023. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(Note to reviewer: IRC § 401(a)(17) limits compensation taken into account to $200,000 in determining contributions and allocations and provides that this limit will be adjusted each year for cost-of-living increases. The limit for 2023 is $330,000. See IRS News Release IR-2022-188. For limits in other years, see COLA Increases for Dollar Limitations on Benefits and Contributions.)

If a determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

If compensation for any prior determination period is taken into account in determining a participant's allocations for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

Sample Adoption Agreement Language:

Compensation shall be determined over the following determination period:

( ) the plan year

( ) a consecutive 12-month period ending with or within the plan year beginning: _____ (day) _____ (month). For employees whose date of hire is less

than 12 months before the end of the 12-month period designated, compensation will be determined over the plan year.

(Note to reviewer: The plan may provide that compensation will be determined over the period of plan participation during the plan year, as provided in Reg. § 1.401(a)(4)-12. See paragraph 4 of the definition of "plan year compensation" in Reg. § 1.401(a)(4)-12.)

(Note to reviewer: Designated Roth matching contributions and designated Roth nonelective contributions are not wages as defined in §§ 3401(a) or 3121(a), therefore, they are not included for purposes of purposes of federal income tax withholding, FICA or FUTA taxation. To the extent that plan language defines any of the following electable compensation definitions with respect to these amounts, plan terms should be revised or otherwise note this change. See Q&A-5, -6, and -7 of Notice 2024-2. See also DC LRM #31 regarding compensation for § 415 purposes and the CODA LRM for additional content in this regard.)

Compensation will mean all of each Participant's:

( ) Wages, tips, and other compensation as reported on Form W-2.

( ) Section 3401(a) wages.

( ) 415 safe-harbor compensation (as defined in section 1.415(c)-2(d) of the Treasury Regulations), which includes contributions (other than Roth Elective Deferrals) made pursuant to a Compensation Reduction Election which are not includible in the gross income of the participant under section 125, 132(f), 402(e)(3), 402(h)(1)(B) or 403(b) of the Internal Revenue Code.

(Note to reviewer: Code § 3401(h) provides that a differential wage payment shall be treated as a payment of wages under Code § 3401(a) for a payment made after December 31, 2008. Similarly, Code § 415(c)(8) provides all plans must include difficulty of care payments in a participant's compensation for purposes of calculating the annual additions limit of Code § 415(c)(1). See Notice 2020-68, Section E.)

( ) Check here if the Employer chooses to exclude contributions (other than Roth Elective Deferrals) made pursuant to a Compensation Reduction Election which are not includible in the gross income of the participant under section 125, 132(f), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

( ) Check here if the Employer chooses to include deemed section 125 compensation (as defined in § 1.415(c)-2(g)(6) of the Treasury Regulations) for purposes of the definition of Compensation.

( ) Check here if the Employer chooses not to include deemed section 125 compensation (as defined in section 1.415(c)-2(g)(6) of the Treasury Regulations) for purposes of the definition of Compensation.

7. Definition of earned income

Statement of Requirement: **Code §§ 401(c)(2), 414(s); Reg. § 1.414(s)-1**

Sample Plan Language:

Earned income means the net earnings from self-employment in the trade or business with respect to which the plan is established, for which personal services of the individual are a material income-producing factor. Net earnings will be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the employer to a qualified plan to the extent deductible under section 404 of the Code.

Net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f) of the Code.

(Note to reviewer: This definition is not required if the plan is a Nonstandardized plan and precludes participation by self-employed individuals.)

8. Definition of disability and imputed compensation

Statement of Requirement: **Code §§ 22(e)(3), 72(m)(7) and 415(c)(3)(C)**

Sample Plan Language:

Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or to be of long continued and indefinite duration. The permanence and degree of such impairment shall be supported by medical evidence.

If elected by the employer in the adoption agreement, nonforfeitable contributions will be made to the plan on behalf of each disabled participant who is not a highly compensated employee within the meaning of section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #11.)

Sample Adoption Agreement Language:

Contributions on behalf of disabled participants:

The employer will _____ will not _____(select whichever option the employer will use) make contributions on behalf of disabled participants on the basis of the compensation each such participant would have received for the limitation year if the

participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

Such imputed compensation for the disabled participant may be taken into account only if the participant is not a highly compensated employee, and contributions made on behalf of such participant will be nonforfeitable when made.

Compensation will mean compensation as that term is defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to the sample adoption agreement language at the end of LRM #31.)

(Note to reviewer: The above provisions are not required if the plan does not offer an employer the option of providing contributions on the basis of imputed compensation. However, a plan which provides for distributions because of disability must define disability in a nondiscriminatory manner.)

9. Definition of employee

Statement of Requirement: **Code §§ 414(b), (c), (m), (n) and (o); Rev. Proc. 2023-37, sec. 9.02(10)**

Sample Plan Language:

Employee means any common law employee of the employer maintaining the plan or of any other employer required to be aggregated with such employer under sections 414(b), (c), (m) or (o) of the Code and the Regulations thereunder.

The term employee also includes any leased employee deemed to be an employee of any employer described in the previous paragraph as provided in section 414(n) of the Code.

(Note to reviewer: See CODA LRM II for the definition of a long-term part-time employee.)

10. Definition of leased employee

Statement of Requirement: **Code §§ 414(n)**

Sample Plan Language:

The term "leased employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with section 414(n)(6) of the Internal Revenue Code)

on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under sections 125, 402(e)(3), 402(h)(1)(B) or 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

11. Definition of highly compensated employee

Statement of Requirement: **Code § 414(q); Reg. § 1.414(q)-1T; Notice 97-45, 1997-2 C.B. 296**

Sample Plan Language:

1. The term Highly Compensated Employee means:

a. any Employee who for the preceding year had compensation from the Employer in excess of $135,000, and, if the employer so elects in the Adoption Agreement, was in the top-paid group for the preceding year;

(Note to reviewer: The $135,000 compensation threshold amount is adjusted for cost-of-living increases to the extent provided under Code § 414(q) for years after 2022. See Note to reviewer below.)

b. any former Employee who was a Highly Compensated Employee for the year they separated from service or at any time after attaining age 55; and

c. any employee who was a 5-percent owner at any time during the year or the preceding year.

For this purpose, the applicable year of the plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year.

2. Whether a former Employee was a Highly Compensated Employee for a

determination year that ended on or after the employee's 55th birthday or that was a separation year is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with section 1.414(q)-1T, A-4 of the Treasury Regulations and Notice 97-45.

(Note to reviewer: Code § 414(q)(1)(B) provides the compensation threshold amount, and further provides that the threshold will be adjusted each year for additional cost-of-living increases. For limits in other years, see COLA Increases for Dollar Limitations on Benefits and Contributions.)

Sample Adoption Agreement Language:

( ) In determining who is a Highly Compensated Employee the employer makes a top-paid group election. The effect of this election is that an employee (who is not a 5-percent owner at any time during the determination year or the look-back year) with compensation in excess of $150,000 (as adjusted for periods after 2023) for the look-back year is a Highly Compensated Employee only if the employee was in the top-paid group for the look-back year.

( ) The Employer revokes its top-paid group election.

( ) In determining who is a Highly Compensated Employee (other than as a 5-percent owner) the employer makes a calendar year data election. The effect of this election is that the look-back year is the calendar year beginning with or within the look-back year.

( ) The Employer revokes its calendar year data election.

(If none of the boxes are checked, there is no top-paid group election and no calendar year data election.)

(Note to reviewer: There are two elections that an employer may make with respect to the definition of highly compensated employee. Under Code § 414(q)(1)(B)(ii), an employer may make a top-paid group election for a determination year. The effect of this election is that an employee with compensation in excess of the dollar limit for the look-back year is a highly compensated employee for the determination year only if the employee was in the top-paid group for the look-back year. Under Section V of Notice 97-45, an employer may also make a calendar year data election for a determination year. The effect of this election is that the look-back year is the calendar year beginning with or within the look-back year. These elections, once made, apply for all subsequent determination years unless changed by the employer. The top-paid group election and the calendar year data election are described in Notice 97-45.

An employer making one of these elections is not required also to make the other election. However, if both elections are made, the look-back year in determining the

top-paid group must be the calendar year beginning with or within the look-back year. These elections must apply consistently to the determination years of all plans of the employer that begin with or within the same calendar year. See Notice 97-45, section VI.

If a qualified plan defines highly compensated employee before an employer either makes or changes a top-paid group election or a calendar year data election for a determination year, the plan must reflect the choices made. Any amendment made for this purpose must reflect the choices made in the operation of the plan for each determination year.)

12. Definition of owner-employee

Statement of Requirement: **Code § 401(c)(3)**

Sample Plan Language: Owner-employee means an individual who is a sole proprietor, or who is a partner owning more than 10 percent of either the capital or profits interest of the partnership.

(Note to reviewer: This definition is not required if the plan is a Nonstandardized plan and precludes participation by owner-employees.)

13. Definition of self-employed individual

Statement of Requirement: **Code §§ 401(b)(2) & 401(c)(1)**

Sample Plan Language:

Self-employed individual means an individual who has earned income for the taxable year from the trade or business for which the plan is established; also, an individual who would have had earned income but for the fact that the trade or business had no net profits for the taxable year.

(Note to reviewer: This definition is not required if the plan is a Nonstandardized plan and precludes participation by self-employed individuals.)

(Note to reviewer: For plan years beginning after December 29, 2022, Section 317 of the SECURE 2.0 Act of 2022 extends the deadline for a sole proprietor with no other employees to make elective deferrals to a new § 401(k) plan to the individual's tax return filing date (without extensions) following the end of the first plan year. Thus, a calendar year sole proprietor will have until April 15 to decide to adopt a § 401(k) plan and make contributions retroactive to the preceding year. See CODA LRMs I and III.)

14. Profit-sharing plan – Definition of normal retirement age, mandatory retirement age restrictions

Statement of Requirement: **Code § 411(a)(8); Reg. § 1.411(a)-7(b)(1); Rev. Proc. 2023-37, sec. 9.02(13)**

Sample Plan Language:

Normal retirement age is the age selected in the adoption agreement. If the employer enforces a mandatory retirement age, the normal retirement age is the lesser of that mandatory age or the age specified in the adoption agreement.

Sample Adoption Agreement Language:

For each participant normal retirement age is:

( ) Age ____ (not to exceed 65)

( ) The later of:

(i) age _____ (not to exceed 65) or

(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date. If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (A) the tenth anniversary of the date the participant commenced participation in the plan (or such anniversary as had been elected by the employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

14A. Money purchase (including target benefit) plan–- definition of normal retirement age

Statement of Requirement: **IRC § 411(a)(8); Reg. §§ 1.401(a)-1(b)(2), 1.411(a)-7(b)(1), 1.411(d)-4, Q&A-12; Notice 2007-69; Rev. Proc. 2023-37, sec. 9.02(13)**

Sample Plan Language:

Normal retirement age is the age selected in the adoption agreement. If the employer

enforces a mandatory retirement age, the normal retirement age is the lesser of that mandatory age or the age specified in the adoption agreement.

Sample Adoption Agreement Language:

For each participant, normal retirement age is: (select A. or B.)

A.

( ) age _____ (not less than 55, nor in excess of 65).

(No age less than 55 can be inserted. If an age less than 62 is inserted, no reliance will be afforded on the Opinion Letter issued to the plan that such age is reasonably representative of the typical retirement age for the industry in which the participants work.)

B.

( ) the later of:

(i) age _____ (not less than 55, nor in excess 65), or

(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date. If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (A) the tenth anniversary of the date the participant commenced participation in the plan (or such anniversary as had been elected by the employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

(Note to reviewer: Under the provisions of Reg. § 1.401(a)-1(b)(2), a plan's normal retirement age (NRA) cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the participants work. An NRA of 62 or older is deemed to satisfy this requirement. An NRA under 55 is presumed not to satisfy this requirement unless the Service determines that the facts and circumstances show otherwise. Whether an NRA less than 62 but not less than 55 satisfies this requirement depends on facts and circumstances.)

15. Definition of benefiting

Statement of Requirement: **Reg. § 1.410(b)-3(a)**

Sample Plan Language:

A participant is treated as benefiting under the plan for any plan year during which the participant received or is deemed to receive an allocation in accordance with § 1.410(b)-3(a).

16. Definition of straight life annuity

Statement of Requirement: **Reg. § 1.401(a)(4)-12**

Sample Plan Language:

Straight life annuity means an annuity payable in equal installments for the life of the participant that terminates upon the participant's death.

MINIMUM PARTICIPATION STANDARDS

17. Maximum age restrictions not permitted

Statement of Requirement: **Code § 410(a)(2)**

(Note to reviewer: The Provider must delete any provision which restricts participation based on the attainment of a specified age.)

18. Provisions for entry into participation

Statement of Requirement: **Code § 410(a)(4); Reg. § 1.410(a)-4(b)**

Sample Plan Language:

The employee will participate on the earlier of: (1) the first day of the plan year beginning after the date on which the employee has met the minimum age and service requirements or (2) six months after the date such requirements are met.

(Note to reviewer: If the plan provides for a single annual entry date, the maximum age and service requirements must be reduced by ½ year unless the employee participates on the entry date nearest the date the employee completes the minimum age and service requirements, and the entry date is the first day of the plan year.)

(Note to reviewer: If the plan has a CODA feature, see LRM #1 and CODA LRM II for provisions regarding eligibility standards applicable to long-term part-time employees.)

19. Eligibility computation periods

Statement of Requirement: **DOL Reg. §§ 2530.202-2(a), 2530.202-2(b)**

Sample Plan Language:

For purposes of determining years of service and breaks in service for purposes of eligibility, the initial eligibility computation period is the 12-consecutive month period beginning on the date the employee first performs an hour of service for the employer (employment commencement date).

The succeeding 12-consecutive month periods commence with the first anniversary of the employee's employment commencement date.

(Note to reviewer: The preceding paragraph is not applicable if the eligibility computation period shifts to the plan year.)

The succeeding 12-consecutive month periods commence with the first plan year which commences prior to the first anniversary of the employee's employment commencement date regardless of whether the employee is entitled to be credited with 1,000 hours of service during the initial eligibility computation period. An employee who is credited with 1,000 hours of service in both the initial eligibility computation period and the first plan year which commences prior to the first anniversary of the employee's initial eligibility computation period will be credited with two years of service for purposes of eligibility to participate.

(Note to reviewer: The preceding paragraph is not applicable if succeeding eligibility computation periods commence on the 12-consecutive month anniversary of the employee's employment commencement date.)

(Note to reviewer: If the plan has a CODA feature, see LRM #1 and CODA LRM II for provisions regarding eligibility standards applicable to long-term part-time employees.)

Sample Adoption Agreement Language:

For purposes of determining whether an Employee has a Year of Eligibility Service, the computation periods subsequent to the initial computation period will be:

[ ] The 12-consecutive month periods commencing on the first anniversary of the Employee's employment commencement date and succeeding anniversaries.

[ ] Plan Years beginning with the first Plan Year commencing after the Employee's employment commencement date.

20. Use of computation periods

Statement of Requirement: **DOL Reg. § 2530.200b-4(a)(2)**

Sample Plan Language:

Years of service and breaks in service will be measured on the same eligibility computation period.

21. All years of service counted toward eligibility except after certain breaks in service

Statement of Requirement: **Code §§ 410(a)(5)(A),(B) & (D); Reg. § 1.410(a)-5**

Sample Plan Language:

All years of service with the employer are counted toward eligibility except the following:

If an employee has a 1-year break in service before satisfying the plan's requirement for eligibility, service before such break will not be taken into account.

(Note to reviewer: The above provision is only permitted if the plan provides 100% vesting after an employee completes the Code § 410(a)(1)(B)(i) eligibility requirements. See Code § 410(a)(5)(B).)

In the case of a participant who does not have any nonforfeitable right to the account balance derived from employer contributions, years of service before a period of consecutive 1-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive 1-year breaks in service in such period equals or exceeds the greater of 5 or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior breaks in service.

If a participant's years of service are disregarded pursuant to the preceding paragraph, such participant will be treated as a new employee for eligibility purposes. If a participant's years of service may not be disregarded pursuant to the preceding paragraph, such participant shall continue to participate in the plan, or, if terminated, shall participate immediately upon reemployment.

(Note to reviewer: For plan language meeting the requirements of the eligibility one-year hold-out rule in Code § 410(a)(5)(C) see LRM #22.)

(Note to reviewer: If the plan has a CODA feature, see LRM #1 and CODA LRM II for provisions regarding eligibility standards applicable to long-term part-time

employees.)

22. Eligibility break in service, one year hold-out rule

Statement of Requirement: **DOL Reg. § 2530.200b-4(b)(1); Code § 410(a)(5)(C)**

(Nonstandardized plans only)

Sample Plan Language:

In the case of any participant who has a 1-year break in service, years of eligibility service before such break will not be taken into account until the employee has completed a year of service after returning to employment.

Such year of service will be measured by the 12-consecutive month period beginning on an employee's reemployment commencement date and, if necessary, subsequent 12-consecutive month periods beginning on anniversaries of the reemployment commencement date.

(Note to reviewer: The preceding paragraph is not applicable if the plan shifts the eligibility computation period to the plan year.)

Such year of service will be measured by the 12-consecutive month period beginning on an employee's reemployment commencement date and, if necessary, plan years beginning with the plan year which includes the first anniversary of the reemployment commencement date.

(Note to reviewer: The preceding paragraph is not applicable if the eligibility computation period is measured with reference to the employment commencement date.)

The reemployment commencement date is the first day on which the employee is credited with an hour of service for the performance of duties after the first eligibility computation period in which the employee incurs a one-year break in service.

If a participant completes a year of service in accordance with this provision, his or her participation will be reinstated as of the reemployment commencement date.

(Note to reviewer: If the plan has a CODA feature, see LRM #1 and CODA LRM II for provisions regarding eligibility standards applicable to long-term part-time employees.)

23. Participation upon return to eligible class

Statement of Requirement: **Code § 410(a)(4)**

Sample Plan Language:

In the event a participant is no longer a member of an eligible class of employees and becomes ineligible to participate but has not incurred a break in service, such employee will participate immediately upon returning to an eligible class of employees. If such participant incurs a break in service, eligibility will be determined under the break in service rules of the plan.

In the event an employee who is not a member of an eligible class of employees becomes a member of an eligible class, such employee will participate immediately if such employee has satisfied the minimum age and service requirements and would have otherwise previously become a participant.

(Note to reviewer: If the plan has a CODA feature, see LRM #1 and CODA LRM II for provisions regarding eligibility standards applicable to long-term part-time employees.)

EMPLOYER CONTRIBUTIONS

24. Money purchase plan -- definite contribution formula

Statement of Requirement: **Reg. §§ 1.401-1(b)(1)(i), 1.401(a)(4)-2(b)(2)(i), 1.401(a)(26)-6(b)(7), 1.410(b)-6(f); Rev. Proc. 2023-37, sec. 9.03(1) & 9.03(3)**

Sample Adoption Agreement Language:

For each plan year, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to ____% (not to exceed 25) of such participant's compensation.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

(Note to reviewer: A Nonstandardized plan may, as an option, require a participant (a) to be employed on the last day of the plan year, and (b) to have completed up to 1,000 hours of service during the plan year to receive an employer contribution.)

25. Profit-sharing plan – definite allocation formula

Statement of Requirement: **Reg. §§ 1.401-1(b)(1)(ii), 1.401(a)(26)-6(b)(7), 1.410(b)-6(f); Rev. Proc. 2023-37, sec. 9.03(1) & 9.03(3)**

Sample Plan Language:

Employer contributions will be allocated to each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year in the ratio that such participant's compensation bears to the compensation of all participants.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

(Note to reviewer: A Nonstandardized plan may, as an option, require a participant (a) to be employed on the last day of the plan year, and (b) to have completed up to 1,000 hours of service during the plan year to receive an allocation of the employer contribution.)

(Note to reviewer: See LRM #94 for additional formulas available to Nonstandardized plans.)

(Note to reviewer: Effective for contributions made after December 29, 2022, plans may permit participants to elect to receive matching and/or employer nonelective contributions as designated Roth contributions. See Section 604 of the SECURE 2.0 Act of 2022. A matching contribution or nonelective contribution may be designated by the employee as a Roth contribution only if the employee is fully vested in that type of contribution at the time the contribution is allocated to the employee's account. The following sample adoption agreement election may be used to enable plan terms to administer this election. Although not replicated therein, this election may also be used in conjunction with the formulas described at LRM #25A, #29 and #94, all of which provide allocation formulas for nonelective contributions. See Part L of Notice 2024-2 for administrative guidance on this provision. See also CODA LRM IX for matching contributions and CODA LRM III for Roth Contribution sample plan language. The election below can be made independently of any election in CODA LRM IX with respect to matching contributions.)

Sample Adoption Agreement Language:

The Employer’s nonelective profit-sharing contribution will be:

[ ] a. Made as a pre-tax discretionary contribution.

[ ] b. Subject to participant election, made as a designated Roth nonelective contribution, in which case (i) the contribution amount and earnings thereon will be 100% fully and immediately vested, and (ii) it is includible in an individual’s gross income for the taxable year in which the contribution is allocated to the individual’s account.

If no election is made, Election a applies.

Election b can be made only if (i) the employee is fully vested in employer profit sharing contributions at the time the contribution is allocated to the employee’s account, (ii) it is made by the employee no later than the time that the contribution is allocated to the employee’s account and (iii) it is irrevocable with respect to those contributions.

An employee must have an effective opportunity to make or change the designation afforded by Elections a and b at least once during each plan year.

25A. Uniform Points Allocation Formula

Statement of Requirement: **Reg. § 1.401(a)(4)-2(b)(3)(i)(A); Rev. Proc. 2023-37, sec. 12.02(4)**

Sample Adoption Agreement Language:

Each participant will receive _____ points for each:

(Must select at least age or service)

_____ year of age

_____ year of service

_____ (not to exceed $200) of Compensation

Each participant's allocation shall bear the same relationship to the employer contribution as his or her total points bears to all points awarded.

(Note to reviewer: Pursuant to § 401(a)(27) of the Code, employer contributions to a profit-sharing plan are not limited to an employer's current or accumulated profits. However, the plan must designate whether it is a pension plan (such as a target benefit or money purchase plan) or a profit-sharing plan. The plan type must also be designated if the plan is a profit-sharing plan which contains a § 401(k) arrangement.)

26. Target benefit plans - stated benefit, plans not providing for permitted disparity

Statement of Requirement: **Code § 401(a)(4); Reg. § 1.401(a)(4)-8(b)(3); Rev. Proc. 2023-37, sec. 10.02(2)(h)**

(Note to reviewer: Because of the potential for discrimination, target benefit plans must satisfy the target benefit safe harbor contained in Reg. § 1.401(a)(4)-8(b)(3). In general, to be eligible for this safe harbor, a target benefit plan must:

- **Provide that each participant's stated benefit be determined as the straight life annuity commencing at the participant's normal retirement age under a formula that would satisfy the requirements of § 1.401(a)(4)-3(b)(4)(i)(C)(1) or (2) (the design-based safe harbors for unit credit and fractional rule defined benefit plans), and each of the uniformity requirements of § 1.401(a)(4)-3(b)(2);**
- **Determine employer contributions necessary to fund a participant's stated benefit under the individual level premium funding method set forth below;**
- **Apply forfeitures under the plan to reduce future employer contributions (see LRM #39);**
- **Provide benefits solely from employer contributions and forfeitures; employee contributions (see LRMs #35-38); and any income, expenses, gains and losses allocated to a participant's account;**
- **Provide that the stated benefit at normal retirement age accrues ratably over the period ending with the plan year in which the participant is projected to reach normal retirement age and beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account under the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the target benefit safe harbor in the regulations; and**
- **If permitted disparity is taken into account, contain a stated benefit formula that satisfies the requirements of § 1.401(l)-3.**

A target benefit plan may limit increases in the stated benefit after normal retirement age consistent with Code § 411(b)(1)(H) (without regard to § 411(b)(1)(H)(iii)), provided that the limitation applies on the same terms to all participants in the plan. Thus, in the case of a target benefit plan with a stated benefit formula expressed as a specific unit of benefit per year of participation up to a maximum number of years of participation, only those participants who at normal retirement age have not earned the maximum number of years of participation under the benefit formula must continue to receive units of benefit for

each year of participation earned after normal retirement age. If the number of years of participation a participant can earn under a unit credit target benefit plan is unlimited, the stated benefit of all participants working beyond normal retirement age must continue to increase on a uniform basis after normal retirement age.)

Sample Adoption Agreement Language:

Flat Benefit

Each participant's stated benefit is equal to _____ % of average annual compensation (reduced pro rata for the participant's years of projected participation less than 25) payable annually as a straight life annuity beginning at normal retirement age.

Unit Credit

Each participant's stated benefit is equal to _____ % of average annual compensation multiplied by the participant's years of projected participation, up to a maximum of _____ (no less than 25), payable annually as a straight life annuity beginning at normal retirement age. The first day of the first plan year taken into account under this stated benefit formula will be _____.

(Note to reviewer: The stated benefit may be expressed only in the form of a straight life annuity without a term certain, refund feature, or survivor benefit.)

(Note to reviewer: The following language may be used in a target benefit plan that provides for a step in its current stated benefit formula, (e.g., a formula that provides a rate of benefit that changes after a certain specified number of years of participation).)

Each participant's stated benefit will be payable annually as a straight life annuity beginning at normal retirement age, in an amount equal to _____ percent of average annual compensation (R1) per year for the first _____ years of the participant's years of projected participation (y) and _____ percent (R2) of average annual compensation per year for the next _____ years of the participant's years of projected participation (such that the total years of projected participation taken into account under R1 and R2 is not less than 33).

If y is less than 33, R2 will be not less than:

$$\frac{(\text{R1})\ (25 - \text{y})}{33 - \text{y}}$$

(but in no case less than 0),

and not greater than:

$$\frac{(R1)\ (44 - y)}{33\ -\ y}$$

Sample Plan Language:

For purposes of determining a participant's stated benefit, a participant's years of projected participation under the plan is the sum of (1) and (2), where (1) is the number of years during which the participant benefited under this plan beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account in the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the safe harbor for target benefit plans in section 1.401(a)(4)-8(b)(3) of the Regulations, and ending with the last day of the current plan year, and (2) is the number of years, if any, subsequent to the current plan year through the end of the plan year in which the participant attains normal retirement age.

For purposes of this definition of years of projected participation, if this plan is a prior safe harbor plan, the plan is deemed to satisfy the safe harbor for target benefit plans in section 1.401(a)(4)-8(b)(3) of the Regulations and a participant is treated as benefiting under the plan in any plan year beginning prior to January 1, 1994.

A prior safe harbor plan is a plan that (1) was adopted and in effect on September 19, 1991, (2) which on that date contained a stated benefit formula that took into account service prior to that date, and (3) satisfied the applicable nondiscrimination requirements for target benefit plans for those prior years.

For purposes of this section, average annual compensation means the average of a participant's annual compensation, as defined in section _____ of the plan, over the three-consecutive plan year period ending in the current year or in any prior year that produces the highest average. If the participant has less than three years of participation in this plan, compensation is averaged over the participant's total period of participation.

(Note to reviewer: The plan may provide for a consecutive year period longer than three years, or it may provide an election in the Adoption Agreement to enable the employer to select the consecutive year period (not less than three years) over which the participant's annual compensation will be averaged. However, the compensation averaging period may not take into account more than 10 years of service immediately preceding the date the average compensation is calculated.)

(Note to reviewer: For purposes of determining a participant's average annual compensation, all target benefit plans must use one of the definitions of Compensation provided in LRM #6.)

(Note to reviewer: In the sample plan provisions above, the participant's compensation history consists of the participant's entire period of service. However, a participant's compensation history may be limited to a period no shorter than the averaging period, provided it is continuous and ends in the current plan year. For example, a plan may provide that average annual compensation is determined based on the 5 years which produces the highest average out of the last 10 years. Also note that in determining a participant's compensation history, certain years may be disregarded. See Reg. § 1.401(a)(4)-3(e)(2)(ii)(B).)

27. Target benefit formula -- stated benefit - plans providing for permitted disparity

Statement of Requirement: **Code §§ 401(l), 401(a)(4); Reg. §§ 1.401(a)(4)-8(b)(3), 1.401(l)-3; Rev. Proc. 2023-37, sec. 10.02(2)(h)**

(Note to reviewer: The stated benefit must be expressed in the form of a straight life annuity without a term certain, refund feature or survivor benefit.)

Sample Plan Language:

[I. Excess Benefit Plan Formulas]

(1) Unit Credit formula – Base and excess benefit allocations will be made as elected in the adoption agreement.

(a) For this purpose, excess benefit allocations under a unit credit target benefit formula cannot exceed the participant’s cumulative permitted disparity limit or maximum excess allowance. The cumulative permitted disparity limit is equal to 35 minus: (1) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (2) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer other than years counted in (1) above or counted toward a participant's years of projected participation. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(b) The maximum excess allowance is equal to the lesser of: (1) the base benefit percentage or (2) the applicable factor determined from Tables I or II in section B below.

Overall permitted disparity limit: Notwithstanding paragraphs (a) and (b) above, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension maintained by the employer that provides for permitted

disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the excess benefit percentage (as elected in the Adoption Agreement) multiplied by the participant's total average annual compensation times the participant's years of projected participation under the plan up to the maximum years of projected participation taken into account in paragraphs (a) and (b).

(2) Flat benefit formula – Allocations will be made equal to the base and excess benefit percentages as elected in the adoption agreement.

(a) For this purpose, the maximum excess allowance is equal to the lesser of: (1) the base benefit percentage; or (2) 35 times the applicable factor determined from Tables I or II in section B below.

(b) For a participant with less than 35 years of projected participation, the base benefit percentage and the excess benefit percentage will be reduced by being multiplied by a fraction, the numerator of which is the participant's years of projected participation, and the denominator of which is 35.

(c) Cumulative permitted disparity reduction: If the number of the participant's cumulative permitted disparity years exceeds 35, the excess benefit percentage will be further reduced as provided below. A participant's cumulative permitted disparity years consists of the sum of: (1) the participant's years of projected participation (up to 35), (2) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (3) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer (other than years counted in (1) or (2) above). For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

If the cumulative permitted disparity reduction is applicable, the excess benefit percentage will be reduced as follows:

(A) Subtract the participant's base benefit percentage from the participant's excess benefit percentage, (after modification in accordance with the paragraph preceding this cumulative permitted disparity reduction).

(B) Multiply the result determined in (A) by a fraction (not less than 0), the numerator of which is 35 minus the sum of the years in (2) and (3) above, and the denominator of which is 35.

(C) The participant's excess benefit percentage is equal to the sum of the result in (B) and the participant's base benefit percentage, as otherwise modified.

(d) Overall permitted disparity limit: Notwithstanding the above, for any plan year this

plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the excess benefit percentage entered into the benefit formula as elected in the Adoption Agreement multiplied by the participant's total average annual compensation under the plan (prorated for years of projected participation less than 35).

[II. Offset Plan Formulas]

(1) Unit Credit formula – Base and excess benefit allocations will be made as elected in the adoption agreement.

(a). Base and excess percentages elected will be limited to the maximum number of years of projected participation taken into account as also elected in the adoption agreement.

(b) The gross benefit percentage will be limited to the maximum number of years of projected participation taken into account as also elected in the adoption agreement.

(c) The maximum offset allowance will not exceed the lesser of: (1) the applicable factor from Tables I or II in section B below, and (2) one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level.

(d) Overall permitted disparity limit: Notwithstanding the preceding paragraphs (a) and (b), for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the gross benefit percentage as elected in the Adoption Agreement (without regard to the offset) times the participant's total average annual compensation times the participant's years of projected participation under the plan up to the maximum of years of projected participation taken into account in paragraphs (a) and (b).

(2) Flat benefit formula – Allocations will be made equal to the base and excess benefit percentages will be made as elected in the adoption agreement.

The maximum offset allowance will not exceed the lesser of: (1) the applicable factor from Tables I or II below, multiplied by 35, and (2) one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level.

For a participant with less than 35 years of projected participation, both the gross benefit percentage and the offset percentage will be reduced by being multiplied by a fraction,

the numerator of which is the number of the participant's years of projected participation, and the denominator of which is 35.

Cumulative permitted disparity reduction: If the number of the participant's cumulative permitted disparity years exceeds 35, the gross benefit percentage and the offset will be further reduced as provided below. A participant's cumulative permitted disparity years consists of the sum of: (1) the participant's years of projected participation (up to 35), (2) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (3) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer (other than years counted in (1) or (2) above). For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the cumulative permitted disparity reduction is applicable, the gross benefit percentage and the offset will be reduced as follows:

(A) The offset will be reduced by multiplying it by a fraction (not less than 0), the numerator of which is 35 minus the sum of the years in (2) and (3) above, and the denominator of which is 35.

(B) The gross benefit percentage will be reduced by the number of percentage points by which the offset was reduced in (A) above.

Overall permitted disparity limit: Notwithstanding the above, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension plan maintained by the employer that provides for permitted disparity (or imputes permitted disparity), the stated benefit for all participants under this plan will be equal to the gross benefit percentage entered in the benefit formula as elected in the Adoption Agreement (without regard to the offset) multiplied by the participant's total average annual compensation under the plan (prorated for years of projected participation less than 35).

B. The applicable factor is the factor derived from the applicable table(s) below based on the normal retirement age under the plan. If the employer elects as an integration level (or offset level) under options 4 or 5 or in the Adoption Agreement, Table II will apply. Otherwise, Table I will apply.

(Note to reviewer: Reg. § 1.401(l)-3(e) requires an adjustment to the 0.75 factor in the maximum excess or offset allowance with respect to benefits payable prior to a participant's social security retirement age using factors set forth in the regulations. The tables below incorporate these factors so that the appropriate reduction is reflected in the plan's stated benefit formula. To satisfy the requirements of § 1.401(a)(4)-8(b)(3) for target benefit plans that take into account permitted

disparity, the 0.75- percent factor, as otherwise reduced, must be multiplied by a factor of 0.80. Table I below contains the reduction factors from Table IV of Reg. § 1.401(l)-3(e)(3) with respect to benefits commencing before a participant's normal retirement age, multiplied by a factor of 0.80. The use of certain integration (or offset) levels requires an additional reduction to the .75 factor (see, e.g., options 4 and 5 in section C. below). Table II below contains factors that are the product of the factors from Table I below and 0.80. Table II is to be used if the employer selects option 4 or 5 in section C of the Adoption Agreement as an integration level (or offset level).)

III. Normal Retirement Age Tables:

Age	TABLE I	TABLE II
65	0.5200	0.4160
64	0.4856	0.3884
63	0.4504	0.3603
62	0.4160	0.3328
61	0.3816	0.3052
60	0.3464	0.2771
59	0.3296	0.2636
58	0.3120	0.2496
57	0.2944	0.2355
56	0.2776	0.2220
55	0.2600	0.2080

IV. Definitions

1. A participant’s years of projected participation under the plan is the sum of (1) and (2), where (1) is the number of years during which the participant benefited under this plan beginning with the latest of: (a) the first plan year in which the participant benefited under the plan, (b) the first plan year taken into account in the stated benefit formula, and (c) any plan year immediately following a plan year in which the plan did not satisfy the safe harbor for target benefit plans in Regulations § 1.401(a)(4)-8(b)(3), and ending with the last day of the current plan year, and (2) is the number of years if any, subsequent to the current plan year through the end of the plan year in which the participant attains normal retirement age.

2. Average annual compensation. Average annual compensation is the average of a participant’s annual compensation as defined in section _____ of the plan, over the three-

consecutive plan year period ending in either the current year or any prior year that produces the highest average. If the participant has less than three years of participation in this plan, compensation is averaged over the participant's total period of participation.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to LRM #6.)

(Note to reviewer: The plan may provide for a consecutive year period longer than three years or provide an election in the adoption agreement to enable the employer to select the consecutive year period (not less than three years) over which the participant's annual compensation will be averaged. However, the compensation averaging period may not take into account more than 10 years of service immediately preceding the date the average compensation is calculated.)

(Note to reviewer: In the sample plan provisions above, the participant's compensation history consists of the participant's entire period of service. However, a participant's compensation history may be limited to a period no shorter than the averaging period, as long as it is continuous and ends in the current plan year. For example, a plan may provide that average annual compensation is determined based on the 5 years which produces the highest average out of the last 10 years. Also note that in determining a participant's compensation history, certain years may be disregarded. See Reg. § 1.401(a)(4)-3(e)(2)(ii)(B).)

3. Covered compensation. A participant's covered compensation for a plan year is the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the participant attains (or will attain) social security retirement age.

In determining a participant's covered compensation for a plan year, the taxable wage base in effect for the current plan year and any subsequent plan year will be assumed to be the same as the taxable wage base in effect as of the beginning of the plan year for which the determination is being made. Covered compensation will be determined based on the year designated by the employer in section _____ of the adoption agreement.

(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds with the Sample Adoption Agreement.)

A participant's covered compensation for a plan year before the 35-year period ending with the last day of the calendar year in which the participant attains social security retirement age is the taxable wage base in effect as of the beginning of the plan year. A participant's covered compensation for a plan year after such 35-year period is the participant's covered compensation for the plan year during which the 35-year period ends.

(Note to reviewer: A plan may also define covered compensation for plan years

beginning prior to 1995 as the average (without indexing) of the taxable wage bases for the 35 calendar years ending with the year prior to the calendar year an individual attains social security retirement age.)

4. Taxable wage base. Taxable wage base is the contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the plan year.

5. Final average compensation. **[OFFSET PLANS ONLY]** A participant's final average compensation is the average of the participant's annual compensation, as defined in section _____ of the plan, from the employer for the three-consecutive year period ending with or within the plan year. If a participant's entire period of employment with the employer is less than three consecutive years, compensation is averaged on an annual basis over the participant's entire period of employment. Compensation for any year in excess of the taxable wage base in effect at the beginning of such year will not be taken into account.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to LRM #6.)

Sample Adoption Agreement Language

A. Each participant's stated benefit under the plan is a straight life annuity commencing at normal retirement age in an amount:

[Excess Benefit Plans]

(1) ( ) Unit Credit

Equal to the sum of (a) and (b) below:

(a) _____ % (base benefit percentage) times average annual compensation up to the integration level for the plan year times the participant's years of projected participation plus a benefit equal to _____ % (excess benefit percentage, not to exceed the base benefit percentage by more than the maximum excess allowance) times average annual compensation in excess of the integration level for the plan year times the participant's years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be _____ (may not be less than 25 and may not exceed 35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit.

(b) _____ % (not to exceed the excess benefit percentage) times average annual compensation for each year of projected participation after the period taken into account under paragraph (a). (If the number of years of projected participation taken into account under paragraph (a) is less than 35 (as modified by the participant's cumulative permitted

disparity limit), then for each year of projected participation after the period taken into account under paragraph (a) up to and including the 35th year of participation (as modified by the participant's cumulative permitted disparity limit), this percentage will be equal to the excess benefit percentage.) The maximum number of years of projected participation taken into account under this paragraph will be _____.

(2) ( ) Flat Benefit

Equal to _____ % times average annual compensation up to the integration level for the plan year (base benefit percentage) plus a benefit equal to _____ % (excess benefit percentage) (not to exceed the base benefit percentage by more than the maximum excess allowance) times average annual compensation in excess of the integration level for the plan year.

[Offset Plans]

(1) ( ) Unit Credit

Equal to the sum of (a) and (b) below:

(a) _____ % (gross benefit percentage) times average annual compensation for the plan year times the participant's years of projected participation offset by _____ % (not to exceed the maximum offset allowance) times final average compensation up to the offset level times the participant's total years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be _____ (may not be less than 25 and may not exceed 35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit. The participant's cumulative permitted disparity limit is equal to 35 minus: (1) the number of years the participant benefited or is treated as having benefited under this plan prior to the participant's first year of projected participation, and (2) the number of years credited to the participant for allocation or accrual purposes under one or more qualified plans or simplified employee pension plans (whether or not terminated) ever maintained by the employer other than years counted in (1) above or counted toward a participant's years of projected participation. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

(b) _____ % (not to exceed the gross benefit percentage) times average annual compensation for each year of projected participation after the period set forth in paragraph (a). (If the number of years of projected participation set forth in paragraph (a) is less than 35 (as modified by the participant's cumulative permitted disparity limit), then for each year of projected participation after the period set forth under paragraph (a) up to and including the 35th year of projected participation (as modified by the participant's

cumulative permitted disparity limit), this percentage will be equal to the gross benefit percentage.) The maximum number of years of projected participation taken into account under this paragraph will be._____.

(2) ( ) Flat Benefit

Equal to _____ % times average annual compensation offset by _____ % (not to exceed the maximum offset allowance) times final average compensation up to the offset level.

B. The integration level (or offset level) for each plan year for each participant will be an amount equal to:

(1) ( ) such participant's covered compensation for the plan year.

(2) ( ) the greater of $10,000 or one-half of the covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins.

(3) ( ) $_____ (a single dollar amount not to exceed the greater of $10,000 or one-half of covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins).

(4) ( ) $ _____ (a single dollar amount that exceeds the greater of $10,000 or one-half of covered compensation of any individual who attains social security retirement age during the calendar year in which the plan year begins, but not to exceed the greater of $25,450 or 150% of the covered compensation of an individual attaining social security retirement age in the current plan year).

(5) ( ) a uniform percentage equal to _____ % (greater than 100 percent but not greater than 150 percent) of each participant's covered compensation for the current year, and in no event in excess of the taxable wage base).

(Note to reviewer: If option 4 or 5 is selected, the applicable factor must be derived from Table II above.)

(Note to reviewer: A Pre-approved Plan may contain integration levels (or offset levels) not specified above that require greater reductions in the 0.75-percent factor. A plan that allows the employer to elect such integration levels must ensure that the maximum excess or offset allowance is appropriately limited. Pre-approved Plans may not allow the employer to elect the intermediate amount integration level (or offset level) under Reg. § 1.401(l)-3(d)(5).)

Sample Plan Language:

(Note to reviewer: The plan may provide, or an election may be provided in the

Adoption Agreement, that in determining a participant's final average compensation, the plan year in which a participant terminates employment may be disregarded if such year is disregarded in determining final average compensation for all participants.)

Covered compensation will be determined based on the following year:

[ ] current year.

[ ] _____ year (may be the covered compensation for a plan year earlier than the current plan year, provided the earlier plan year is the same for all participants and is not earlier than the plan year that begins 5 years before the current plan year. If the plan year entered is more than five years prior to the current plan year, the participant's covered compensation will be that determined under the covered compensation table for the plan years five years prior to the current plan year).

28. Target benefit plans – calculation of employer contributions

Statement of Requirement: **Code § 401(a)(4); Reg. §§ 1.401(a)(4)-8(b)(3), 1.401(a)(4)-13(e); Rev. Proc. 2023-37, sec. 9.03(4)**

Sample Plan Language:

For each plan year the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year the annual employer contribution calculated below. The annual employer contribution necessary to fund the stated benefit with respect to a participant will be determined each year as follows:

(Note to reviewer: A Nonstandardized plan may, as an option, require a participant (a) to be employed on the last day of the plan year, and / or (b) to have completed up to 1,000 hours of service during the plan year to receive an employer contribution.)

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

Step 1: If the participant has not yet reached normal retirement age, calculate the present value of the stated benefit by multiplying the stated benefit by the factor that is the product of: i) the applicable factor in Table I (if attained (current) age is less than 65) or Table IA (if attained age is greater than or equal to 65), and (ii) the applicable factor in

Table III. If the participant is at or beyond normal retirement age, calculate the present value of the stated benefit by multiplying the stated benefit by the factor in Table IV corresponding to that normal retirement age.

(Note to reviewer: If the plan provides options for normal retirement ages other than those for which factors are provided in Tables III below, the plan must contain the appropriate factors.)

Step 2: Calculate the excess, if any, of the amount determined in Step 1 over the theoretical reserve.

Step 3: Amortize the result in Step 2 by multiplying it by the applicable factor from Table II. For the plan year in which the participant attains normal retirement age and for any subsequent plan year, the applicable factor is 1.0. For purposes of this section, the theoretical reserve is determined according to (i) and (ii) below:

(i) Initial theoretical reserve. A participant's theoretical reserve as of the last day of the participant's first year of projected participation (year 1) is zero. However, if this plan is a prior safe harbor plan with a stated benefit formula that takes into account plan years prior to the first plan year this plan satisfies the safe harbor in Regulation section 1.401(a)(4)-8(b)(3)(c), the initial theoretical reserve is determined as follows:

(A) Calculate as of the last day of the plan year immediately preceding year 1 the present value of the stated benefit, using the actuarial assumptions, the provisions of the plan, and the participant's compensation as of such date. For a participant who is beyond normal retirement age during year 1, the stated benefit will be determined using the actuarial assumptions, the provisions of the plan, and the participant's compensation as of such date, except that the straight life annuity factor used in that determination will be the factor applicable for the participant's normal retirement age.

(B) Calculate as of the last day of the plan year immediately preceding year 1 the present value of future employer contributions, i.e., the contributions due each plan year using the actuarial assumptions, the provisions of the plan, (disregarding those provisions of the plan providing for the limitations of section 415 of the Code or the minimum contributions under section 416), and the participant's compensation as of such date, beginning with year 1 through the end of the plan year in which the participant attains normal retirement age.

(C) Subtract the amount determined in (B) from the amount determined in (A).

(ii) Accumulate the initial theoretical reserve determined in (i) and the employer contribution (as limited by section 415 of the Code, but without regard to any required minimum contributions under section 416) for each plan year beginning in year 1 up

through the last day of the current plan year (excluding contribution(s) (if any) for the current plan year) using the plan's interest assumption in effect for each such year. In any plan year following the plan year in which the participant attains normal retirement age, the accumulation is calculated assuming an interest rate of 0%.

For purposes of determining the level of annual employer contribution necessary to fund the stated benefit, the calculations in (i) and (ii) above will be made as of the last day of each plan year, on the basis of the participant's age on the participant's last birthday, using the interest rate in effect on the last day of the prior plan year.

Sample Adoption Agreement Language:

For purposes of determining the annual employer contribution necessary to fund the stated benefit, the interest rate will be:

( ) 7.50%

( ) 8.00%

( ) 8.50%

TABLE I: Present value factors (See * below)

number of years from attained age to age 65*	interest rate		
---	7.50%	8.00%	8.50%
1	7.868	7.589	7.326
2	7.319	7.027	6.752
3	6.808	6.506	6.223
4	6.333	6.024	5.736
5	5.891	5.578	5.286
6	5.480	5.165	4.872
7	5.098	4.782	4.491
8	4.742	4.428	4.139
9	4.412	4.100	3.815
10	4.104	3.796	3.516
11	3.817	3.515	3.240
12	3.551	3.255	2.986
13	3.303	3.014	2.752
14	3.073	2.790	2.537
15	2.859	2.584	2.338
16	2.659	2.392	2.155

17	2.474	2.215	1.986
18	2.301	2.051	1.831
19	2.140	1.899	1.687
20	1.991	1.758	1.555
21	1.852	1.628	1.433
22	1.723	1.508	1.321
23	1.603	1.396	1.217
24	1.491	1.293	1.122
25	1.387	1.197	1.034
26	1.290	1.108	0.953
27	1.200	1.026	0.878
28	1.116	0.950	0.810
29	1.039	0.880	0.746
30	0.966	0.814	0.688
31	0.899	0.754	0.634
32	0.836	0.698	0.584
33	0.778	0.647	0.538
34	0.723	0.599	0.496
35	0.673	0.554	0.457
36	0.626	0.513	0.422
37	0.582	0.475	0.389
38	0.542	0.440	0.358
39	0.504	0.407	0.330
40	0.469	0.377	0.304
41	0.436	0.349	0.280
42	0.406	0.323	0.258
43	0.377	0.299	0.238
44	0.351	0.277	0.219
45	0.327	0.257	0.202

* If a participant's attained age is at or above 65 but still below the participant's NRA, use Table IA.

Note: These factors are based on the UP-1984 Mortality Table.

TABLE IA: Present value factors for participants below normal retirement age (to be used only when attained age is greater than or equal to 65.)

number of years from age 65 to attained age	interest rate

---	7.50%	8.00%	8.50%
0	8.458	8.196	7.949
1	9.092	8.852	8.625
2	9.774	9.560	9.358
3	10.507	10.325	10.153
4	11.295	11.151	11.016
5	12.143	12.043	11.953
6	13.053	13.006	12.969
7	14.032	14.047	14.071
8	15.085	15.170	15.267
9	16.216	16.384	16.565
10	17.432	17.695	17.973
11	18.740	19.110	19.500
12	20.145	20.639	21.158
13	21.656	22.290	22.956
14	23.280	24.073	24.907
15	25.026	25.999	27.025

Note: These factors are based on the UP-1984 Mortality Table.

TABLE II: Amortization factors

number of years from attained age to normal retirement age	interest rate		
---	7.50%	8.00%	8.50%
1	0.5181	0.5192	0.5204
2	0.3577	0.3593	0.3609
3	0.2777	0.2796	0.2814
4	0.2299	0.2319	0.2339
5	0.1982	0.2003	0.2024
6	0.1756	0.1778	0.1801
7	0.1588	0.1611	0.1634
8	0.1458	0.1482	0.1506
9	0.1355	0.1380	0.1405
10	0.1272	0.1297	0.1323
11	0.1203	0.1229	0.1255
12	0.1145	0.1171	0.1198
13	0.1096	0.1123	0.1151
14	0.1054	0.1082	0.1110

15	0.1018	0.1046	0.1075
16	0.0986	0.1015	0.1044
17	0.0958	0.0988	0.1018
18	0.0934	0.0964	0.0994
19	0.0912	0.0943	0.0974
20	0.0893	0.0924	0.0956
21	0.0876	0.0908	0.0940
22	0.0861	0.0893	0.0925
23	0.0847	0.0879	0.0912
24	0.0835	0.0867	0.0901
25	0.0823	0.0857	0.0890
26	0.0813	0.0847	0.0881
27	0.0804	0.0838	0.0872
28	0.0795	0.0830	0.0865
29	0.0788	0.0822	0.0858
30	0.0781	0.0816	0.0851
31	0.0774	0.0810	0.0846
32	0.0768	0.0804	0.0840
33	0.0763	0.0799	0.0836
34	0.0758	0.0794	0.0831
35	0.0753	0.0790	0.0827
36	0.0749	0.0786	0.0824
37	0.0745	0.0783	0.0820
38	0.0742	0.0779	0.0817
39	0.0739	0.0776	0.0815
40	0.0736	0.0774	0.0812
41	0.0733	0.0771	0.0810
42	0.0730	0.0769	0.0808
43	0.0728	0.0767	0.0806
44	0.0726	0.0765	0.0804
45	0.0724	0.0763	0.0802

TABLE III: Factors to be multiplied by those in Table I.

normal retirement age	interest rate		
---	7.50%	8.00%	8.50%
80	0.206	0.194	0.184
79	0.231	0.219	0.207
78	0.258	0.246	0.234
77	0.289	0.276	0.263
76	0.322	0.309	0.296
75	0.359	0.346	0.333
74	0.400	0.387	0.374
73	0.446	0.432	0.419
72	0.495	0.482	0.469
71	0.549	0.537	0.525
70	0.609	0.597	0.586
69	0.674	0.664	0.653
68	0.745	0.736	0.728
67	0.822	0.816	0.810
66	0.907	0.904	0.900
65	1.000	1.000	1.000
64	1.101	1.106	1.110
63	1.212	1.221	1.231
62	1.332	1.348	1.363
61	1.464	1.486	1.509
60	1.606	1.637	1.669
59	1.761	1.802	1.844
58	1.929	1.982	2.036
57	2.111	2.177	2.246
56	2.309	2.390	2.475
55	2.523	2.622	2.726

NOTE: These factors are based on the UP-1984 Mortality Table.

TABLE IV: Factors for participants who are at or beyond normal retirement age.

normal retirement age	interest rate		
---	7.50%	8.00%	8.50%
80	5.151	5.053	4.959
79	5.370	5.264	5.162
78	5.591	5.476	5.366

77	5.814	5.690	5.572
76	6.039	5.905	5.777
75	6.266	6.122	5.985
74	6.494	6.339	6.192
73	6.721	6.556	6.398
72	6.947	6.771	6.603
71	7.171	6.983	6.804
70	7.392	7.192	7.003
69	7.610	7.399	7.198
68	7.825	7.601	7.389
67	8.037	7.801	7.577
66	8.248	7.999	7.764
65	8.458	8.196	7.949
64	8.666	8.390	8.131
63	8.870	8.581	8.311
62	9.072	8.770	8.485
61	9.270	8.954	8.657
60	9.463	9.133	8.825
59	9.651	9.307	8.986
58	9.834	9.477	9.143
57	10.012	9.641	9.295
56	10.186	9.801	9.442
55	10.354	9.955	9.585

NOTE: These factors are based on the UP-1984 Mortality Table.

29. Permitted disparity

Statement of Requirement: **Code §§ 401(l), 401(a)(5); Reg. §§ 1.401(l)-2, 1.401-1(b)(1)(ii), 1.401(a)(26)-6(b)(7), 1.410(b)-6(f); Rev. Proc. 2023-37, sec. 9.03(1)**

Profit-sharing plan:

(Note to reviewer: Pursuant to Code § 401(a)(27), employer contributions to a profit-sharing plan are not limited to an employer's current or accumulated profits; however, the plan must designate whether it is a pension plan (such as a target benefit or money purchase plan), or a profit-sharing plan. The plan type must also be designated if the plan is a profit-sharing plan that contains a § 401(k) arrangement.)

Sample Plan Language:

Subject to the overall permitted disparity limits, employer contributions for the plan year

plus any forfeitures will be allocated to the account of each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year as follows:

(Note to reviewer: A Nonstandardized plan may, as an option, require a participant (a) to be employed on the last day of the plan year, and /or (b) to have completed up to 1,000 hours of service during the plan year to receive an allocation of the employer contribution.)

STEP ONE: Contributions and forfeitures will be allocated to each participant's account in the ratio that each participant's total compensation bears to all participants' total compensation, but not in excess of 3% of each participant's compensation.

(Note to reviewer: A plan that utilizes elapsed time in lieu of counting hours of service may substitute the completion of either 91 consecutive calendar days or 3 consecutive calendar months for 500 hours of service in the above sample language.)

STEP TWO: Any contributions and forfeitures remaining after the allocation in Step One will be allocated to each participant's account in the ratio that each participant's excess compensation for the plan year in excess of the integration level bears to the excess compensation of all participants, but not in excess of 3% of each participant's compensation. For purposes of this Step Two, in the case of any participant who has exceeded the cumulative permitted disparity limit described below, such participant's total compensation for the plan year will be taken into account.

STEP THREE: Any contributions and forfeitures remaining after the allocation in Step Two will be allocated to each participant's account in the ratio that the sum of each participant's total compensation and compensation in excess of the integration level bears to the sum of all participants' total compensation and compensation in excess of the integration level, but not in excess of the profit- sharing maximum disparity rate. For purposes of this Step Three, in the case of any participant who has exceeded the cumulative permitted disparity limit described below, two times such participant's total compensation for the plan year will be taken into account.

STEP FOUR: Any remaining employer contributions or forfeitures will be allocated to each participant's account in the ratio that each participant's total compensation for the plan year bears to all participants' total compensation for that year.

The integration level shall be equal to the taxable wage base, or such lesser amount elected by the employer in the adoption agreement. The taxable wage base is the contribution and benefit base under section 230 of the Social Security Act at the beginning of the plan year.

Overall permitted disparity limits

Annual overall permitted disparity limit: Notwithstanding the preceding paragraphs, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension, as defined in § 408(k) of the Code, maintained by the employer that provides for permitted disparity (or imputes disparity), employer contributions and forfeitures will be allocated to the account of each participant who either completes more than 500 hours of service during the plan year or who is employed on the last day of the plan year in the ratio that such participant's total compensation bears to the total compensation of all participants.

Cumulative permitted disparity limit: The cumulative permitted disparity limit for a participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the participant for allocation or accrual purposes under this plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the employer. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the participant has no cumulative disparity limit.

Compensation shall mean compensation as defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number which corresponds to LRM #62.)

The maximum profit-sharing disparity rate is equal to the lesser of:

(a) 2.7%

(b) the applicable percentage determined in accordance with the table below:

If the Integration Level

is more than	but not more than	the applicable percentage is:
$0	X*	2.7%
X* of TWB	80% of TWB	1.3%
80% of TWB	Y**	2.4%

*X = the greater of $10,000 or 20 percent of the taxable wage base

**Y = any amount more than 80% of the taxable wage base but less than 100% of the taxable wage base.

If the integration level used is equal to the taxable wage base, the applicable percentage is

2.7%.

(Note to reviewer: The taxable wage base for 2023 is $160,200.)

(Note to reviewer: The above allocation formula incorporates a 3% top-heavy minimum contribution for all years. However, a plan may provide that steps 1 and 2 above apply only in years in which the plan is top-heavy.)

Sample Adoption Agreement Language:

( ) The employer's profit-sharing allocation is integrated within the meaning of Code section 401(l). The integration level is equal to:

( ) Taxable wage base

( ) $_____ (a dollar amount less than the taxable wage base)

( ) _____ % of taxable wage base (not to exceed 100%)

Money purchase plan

Sample Adoption Agreement Language:

Subject to the overall permitted disparity limits, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to _____ % (base contribution percentage, not less than 3) of each participant's compensation (as defined in section _____ of the plan) for the plan year, up to the integration level plus _____ % (excess contribution percentage, not less than 3% and not to exceed the base contribution percentage by more than the lesser of: (1) the base contribution percentage, or (2) the money purchase maximum disparity rate) of such participant's compensation in excess of the integration level. However, in the case of any participant who has exceeded the cumulative permitted disparity limit, the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to the excess contribution percentage multiplied by the participant's total compensation.

(Note to reviewer: The above allocation formula incorporates a 3% top-heavy minimum contribution. The second blank should be filled in with the plan section number corresponding to LRM #62.)

Overall permitted disparity limit:

Annual overall permitted disparity limit: Notwithstanding the preceding paragraph, for any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension, as defined in § 408(k) of the Code, maintained by the

employer that provides for permitted disparity (or imputes disparity), the employer will contribute for each participant who either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year an amount equal to the excess contribution percentage multiplied by the participant's total compensation.

Cumulative permitted disparity limit: The cumulative permitted disparity limit for a participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the participant for allocation or accrual purposes under this plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the employer. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the participant has no cumulative disparity limit.

The integration level shall be equal to the taxable wage base, or such lesser amount elected by the employer below. The taxable wage base is the contribution and benefit base in effect under section 230 of the Social Security Act at the beginning of the plan year.

The integration level is equal to:

( ) Taxable wage base

( ) $ _____ (a dollar amount less than the taxable wage base)

( ) _____ % of taxable wage base (not to exceed 100%)

The maximum money purchase disparity rate is equal to the lesser of:

(a) 5.7%

(b) the applicable percentage determined in accordance with the table below.

(i) If the integration level:

is more than	but not more than	the applicable percentage is:
$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB	Y**	5.4%

*X = the greater of $10,000 or 20 percent of the taxable wage base

**Y = any amount more than 80% of the taxable wage base but less than 100% of the taxable wage base.

If the integration level is equal to taxable wage base the applicable percentage is 5.7%.

30. Accrual limitations based upon age not permitted

Statement of Requirement: **Code §411(b)(2)**

(Note to reviewer: The Provider should delete any plan provision which allows an allocation of employer contributions or forfeitures to be discontinued or decreased solely because of the participant's attainment of any age.)

31. Limitation on allocations

Statement of Requirement: **Code § 415; Reg. §§ 1.415(a)-1 through 1.415(j)-1;Rev. Proc. 2023-37, sec. 9.02 & 10.02(1)(a); Prop. Reg. § 1.415(c)-2(g); Notice 2020-68, 2020-38 I.R.B. 567**

(Note to reviewer: A defined contribution Pre-Approved Plan cannot incorporate by reference the Code § 415 limitations.)

Sample Plan Language:

Article _____ Limitation on Allocations

Section 1. If the participant does not participate in, and has never participated in, another qualified defined contribution plan (or defined benefit plan permitting employee contributions) maintained by the employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the employer, or an individual medical account, as defined in section 415(l)(2) of the Code, maintained by the employer, or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the employer, which provides an annual addition as defined in section 4.1, the amount of annual additions which may be credited to the participant's account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this plan. If the employer contribution that would otherwise be contributed or allocated to the participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

Section 2. This section applies if, in addition to this plan, the participant is covered under another qualified Pre-approved defined contribution plan maintained by the

employer, a welfare benefit fund maintained by the employer, an individual medical account maintained by the employer, or a simplified employee pension maintained by the employer, that provides an annual addition as defined in section 4.1, during any limitation year. The annual additions which may be credited to a participant's account under this plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a participant's account under the other qualified Pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same limitation year.

If the annual additions with respect to the participant under other qualified Pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the employer are less than the maximum permissible amount and the employer contribution that would otherwise be contributed or allocated to the participant's account under this plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the participant under such other qualified Pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the participant's account under this plan for the limitation year.

Section 3. If the participant is covered under another qualified defined contribution plan maintained by the employer which is not a Pre-approved Plan, annual additions which may be credited to the participant's account under this plan for any limitation year will be limited in accordance with this section as though the other plan were a Pre-approved Plan, unless the employer provides other limitations in section _____ of the adoption agreement.

(Note to reviewer: The blank in Section 3 should be completed with the relevant section number of the adoption agreement where the other limitations are described.)

Section 4. Definitions.

Section 4.1. Annual additions: The sum of the following amounts credited to a participant's account for the limitation year:

(a) employer contributions;

(b) employee contributions;

(c) forfeitures;

(d) amounts allocated to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the employer;

(e) contributions paid or accrued to provide post-retirement medical benefits, allocated to the separate account of a key employee, as defined in section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the employer; and

(f) allocations under a simplified employee pension.

Section 4.2. Compensation: One of the following as elected by the employer in section _____ of the adoption agreement:

(Note to reviewer: The blank should be filled in with the section number of the adoption agreement where the employer selects the definition of compensation that will be used for purposes of the plan's Code § 415 limitations and that corresponds to paragraph B of the sample adoption agreement provisions of this LRM.)

(a) Information required to be reported under sections 6041, 6051, and 6052 of the Internal Revenue Code (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of section 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2).) Compensation shall be determined without regard to designated Roth matching contributions and designated Roth nonelective contributions made to this plan after December 31, 2022.

(b) Section 3401(a) wages. Compensation is defined as wages within the meaning of section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2).) Compensation shall be determined without regard to designated Roth matching contributions and designated Roth nonelective contributions made to this plan or to a SIMPLE IRA or a Simplified Employee Pension after Iember 31, 2022.

(c) 415 safe-harbor compensation. Compensation is defined as wages, salaries, differential wage payments under section 3401(h), and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for

personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a non-accountable plan (as described in section 1.62-2(c) of the Regulations)), and excluding the following:

(i) Employer contributions (other than elective contributions described in sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b) of the Code) to a plan of deferred compensation (including a simplified employee pension described in section 408(k) or a simple retirement account described in section 408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than, if the employer so elects in section _____ of the adoption agreement, amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;

(Note to reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation distributions from a nonqualified unfunded plan of deferred compensation that are includible in gross income. See paragraph B of the sample adoption agreement provisions of this LRM.)

(ii) Amounts realized from the exercise of a non-statutory stock option (that is, an option other than a statutory stock option as defined in section 1.421-1(b) of the Regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

(iv) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in section 125);

(v) Designated Roth matching contributions and designated Roth nonelective contributions made to this plan after December 31, 2022; and

(vi) Other items of remuneration that are similar to any of the items listed in (i) through (v).

For any self-employed individual, compensation shall mean earned income.

Compensation or earned income includes difficulty of care payments under Code section 131(c)(1)(A) that are otherwise excludable from income.

(Note to reviewer: Code § 415(c)(8) provides that all plans must include difficulty of care payments in a participant's compensation for purposes of calculating the annual additions limit of Code § 415(c)(1). See Notice 2020-68, Section E.)

Except as provided herein, compensation for a limitation year is the compensation actually paid or made available during such limitation year. If elected by the employer in section _____ of the adoption agreement, compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement where the employer may elect to include compensation earned in the limitation year but not paid in that limitation year solely because of the timing of pay periods and pay dates. See paragraph C of the sample adoption agreement provisions of this LRM.)

Compensation for a limitation year shall also include compensation paid by the later of 2½ months after an employee's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the employee's severance from employment with the employer maintaining the plan, if:

(a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or, if the employer so elects in section _____ of the adoption agreement,

(Note to reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain post-severance pay for unused accrued leave as well as post-severance payments from a nonqualified unfunded plan of deferred compensation. See paragraph D of the sample adoption agreement provisions of this LRM.)

(b) the payment is for unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued; or

(c) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment

had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, if elected by the employer in section _____ of the adoption agreement, compensation paid to a participant who is permanently and totally disabled, as defined in section 22(e)(3) of the Code, provided, as elected by the employer in section _____ of the adoption agreement, salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period, or the participant was not a highly compensated employee, as defined in section 414(q) of the Code, immediately before becoming disabled.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Regulations, shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(Note to reviewer: The 1st blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain salary continuation payments to individuals who are permanently and totally disabled. The 2nd blank should be filled in with the section of the adoption agreement where the employer elects whether the inclusion in compensation of salary continuation payments to permanently and totally disabled participants, if applicable, shall apply with respect to all such participants or with respect to all such participants who were not highly compensated employees immediately before becoming disabled. See section E of the sample adoption agreement provisions of this LRM.)

Compensation paid or made available during a limitation year shall include amounts that would otherwise be included in compensation but for an election under sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.

Unless the employer elects otherwise in section _____ of the adoption agreement, compensation shall also include deemed section 125 compensation. "Deemed section 125 compensation" is an amount that is excludable under section 106 that is not available to a participant in cash in lieu of group health coverage under a section 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed section 125 compensation only if the employer does not request or otherwise collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(Note to reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to exclude deemed § 125

compensation from compensation. See paragraph F of the sample adoption agreement provisions of this LRM.)

If elected by the employer in section _____ of the adoption agreement, compensation shall not include amounts paid as compensation to a nonresident alien, as defined in section 7701(b)(1)(B) of the Code, who is not a participant in the plan to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(Note to reviewer: This election is provided as a rule of administrative convenience for purposes of determining who is a key employee for purposes of § 416 and who is a highly compensated employee as defined in § 414(q). The blank should be filled in with the section number of the adoption agreement where the employer may elect to exclude non-participant compensation. See paragraph G of the sample adoption agreement provisions of this LRM.)

(Note to reviewer: For plans that are sponsored by Indian tribal governments, effective for taxable years ending on or after November 15, 2013, proposed regulations clarify that compensation received by Indian tribal members for services rendered in performing certain fishing rights-related activities may be treated as compensation for purposes of applying § 415 limitations, even though these payments might otherwise be excludible from gross income. These regulations clarify that exclusion notwithstanding, fishing rights-related income is includible in § 415 compensation and amounts may be contributed to a qualified retirement plan based on this income. Under these regulations, fishing rights-related activity with respect to Indian tribes includes any activity directly related to (a) harvesting, processing or transporting fish harvested in the exercise of a recognized fishing right of the tribe; or (b) selling such fish but only if substantially all of such harvesting was performed by members of such tribe. See Prop Reg § 1.415(c)-2(g)(9).)

Section 4.3 Defined contribution dollar limitation: $40,000, as adjusted under section 415(d) of the Code.

(Note to reviewer: For 2023, the Code § 415(c) annual additions dollar limit is $66,000. This amount can be inserted in Sections 4.3 and Section 4.7 in place of the statutory amount.)

Section 4.4 Employer: For purposes of this article, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Code as modified by section 415(h)), all commonly controlled trades or businesses (as defined in section 414(c) as modified by section 415(h)) or affiliated service groups (as defined in section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to

regulations under section 414(o).

Section 4.5. Limitation year: A calendar year, or the 12-consecutive month period elected by the employer in section _____ of the adoption agreement. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(Note to reviewer: The blank should be filled in with the section of the adoption agreement that corresponds to paragraph H of the adoption agreement.)

Section 4.6. Pre-approved Plan: A plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

Section 4.7. Maximum Annual Additions:

Except for catch up contributions described in section 414(v) of the Code, the annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:

(a) the defined contribution dollar limitation described in Section 4.3, or

(b) 100 percent of the participant's compensation for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of sections 401(h) or 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

If the plan is terminated as of a date other than the last day of the limitation year, the plan is deemed to have been amended to change its limitation year and the maximum permissible amount shall be prorated for the resulting short limitation year.

Sample Adoption Agreement Language:

A. If the employer maintains or ever maintained another qualified plan in which any participant in this plan is (or was) a participant or could become a participant, the employer must complete this section.

If the participant is covered under another qualified defined contribution plan maintained

by the employer, other than a Pre-approved Plan:

( ) The provisions of section 2 of Article _____ will apply as if the other plan were a Pre-approved Plan.

( ) (Provide the method under which the plans will limit total annual additions to the maximum permissible amount, and will properly reduce any excess amounts, in a manner that precludes employer discretion.)

(Note to reviewer: The Provider should leave space for the adopting employer to provide language which will satisfy the limitation for defined contribution plans in Code § 415(c). Such language must preclude employer discretion.)

B. Compensation shall mean all of each participant's:

( ) Wages, tips, and other compensation as reported on Form W-2

( ) Section 3401(a) wages

( ) Section 415 safe-harbor compensation

(Note to reviewer: Code § 3401(h) provides that a differential wage payment shall be treated as a payment of wages under § 3401(a) for a payment made after December 31, 2008.)

If compensation is defined as "Section 415 safe-harbor compensation," amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan

( ) shall

( ) shall not

be considered compensation in the year the amounts are actually received. Such amounts may be considered compensation only to the extent includible in gross income.

C. Amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates

( ) shall be included in compensation for the limitation year, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

( ) shall not be included in compensation for the limitation year.

D. Compensation

( ) shall

( ) shall not

include amounts paid within 2 ½ months after severance from employment (or the end of the limitation year that includes the date of severance) for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; and amounts received by an employee pursuant to a nonqualified unfunded deferred compensation plan which would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

E. Compensation shall include post-severance compensation paid to (check one or neither)

( ) any participant who is permanently and totally disabled. (Check this box only if salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period.)

( ) any permanently and totally disabled participant who, immediately before becoming so disabled, was not a highly compensated employee.

F. (Complete this section to exclude deemed section 125 compensation from the plan's definition of compensation.)

_____ (Check if this section applies.) Compensation shall not include deemed section 125 compensation.

G. (Complete this section to exclude non-participant compensation.)

_____ (Check if this section applies.) Compensation shall not include amounts paid as compensation to nonresident aliens who do not participate in the plan to the extent the compensation is excludable from gross income and not effectively connected with a U.S. trade or business.

H. The limitation year is the following 12-consecutive month period: _____

(Note to reviewer: A plan sponsor may be able to correct excess annual additions through the Employee Plans Compliance Resolution System (EPCRS). See Rev. Proc. 2021-30, 2021-31 I.R.B. 172, as periodically amended. See also Notice 2023-43, 2023-24 I.R.B. 919, for guidance related to the expansion of EPCRS provided by Section 305 of the SECURE 2.0 Act of 2022. Under the Act and this guidance, eligible inadvertent failures may be self-corrected by the sponsor.)

32. Qualified Longevity Annuity Contracts

Statement of Requirement: **IRC § 401(a)(9); Reg. §§ 1.401(a)(9)-5, Q&A-3(d), 1.401(a)(9)–6, Q&A–17**

Sample Plan Language:

For purposes of computing minimum required distributions that must be made to a participant or beneficiary in each distribution calendar year in order to satisfy section 401(a)(9) of the Code, a participant's account balance does not include the value of any qualifying longevity annuity contract (QLAC). A QLAC is an annuity contract, purchased from an insurance company on or after July 2, 2014, for the benefit of an employee under the plan, stating its intent to be a QLAC and otherwise meeting all of the requirements of section 1.401(a)(9)-6 of the Regulations.

The amount of the premiums paid for the QLAC under the plan will not exceed the lesser of:

(a) An amount equal to the excess of $125,000 ($200,000 for contracts purchased on or after December 29, 2022) (as adjusted by the Commissioner) over the sum of:

(1) the premiums paid before that date with respect to the contract, and

(2) premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the employee under the plan, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental plan under section 457(b); or

(b) For contracts purchased or received in an exchange before December 29, 2022, an amount equal to the excess of:

(1) 25 percent of the employee's account balance (as of the last valuation date preceding the date of the premium payment) under the plan (including the value of any QLAC held under the plan for the employee) as of the contract date, over

(2) the sum of premiums paid before that date with respect to the contract and premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the employee under the plan.

(Note to reviewer: For contracts purchased or received in an exchange on or after December 29, 2022, the 25% limit has been eliminated by Section 202 of the SECURE 2.0 Act of 2022. Therefore, plan terms for years after this date should reflect the percentage limitation in Sample Plan Language (b) above, unless limited to contracts purchase or received in an exchange before December 29, 2022. In addition, the SECURE 2.0 Act of 2022 increased the dollar limitation to $200,000,

subject to future inflation adjustments.)

Distributions under the QLAC portion of the participant's account will commence not later than the first day of the month next following the participant's 85th birthday. After distributions commence, those distributions must satisfy all applicable minimum distribution requirements from that point forward (other than the requirement that annuity payments commence on or before the Required Beginning Date.)

If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the above limits, the excess premium will be returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid.

(Note to reviewer: The regulations pertaining to QLACs apply to contracts purchased on or after July 2, 2014. If, on or after July 2, 2014, an existing contract is exchanged for a contract that satisfies the requirements of the regulations, the new contract will be treated as purchased on the date of the exchange and the fair market value of the contract that is exchanged for a QLAC will be treated as a premium paid with respect to the QLAC.

The regulations provide that to be a QLAC, an annuity contract must meet the following conditions:

1) **Premiums for the contract satisfy the requirements of paragraph (b) of Reg. § 1.401(a)(9)-6, Q&A 17;**
2) **The contract provides that distributions under the contract must commence no later than a specified annuity starting date that is no later than the first day of the month next after the employee's 85th birthday;**
3) **The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of Reg. § 1.401(a)(9)-6 (other than the requirement that annuity payments commence on or before the required beginning date);**
4) **The contract does not make available any commutation benefit, cash surrender right, or other similar feature;**
5) **No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of Reg. § 1.401(a)(9)-6, Q&A 17;**
6) **When the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and**
7) **The contract is not a variable contract under section 817, an indexed**

contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance.

(Note to reviewer: In the case of a QLAC which was purchased, or received in an exchange, on or after July 2, 2014, with joint and survivor annuity benefits for the individual and the individual's spouse which were permissible under the regulations at the time the contract was originally purchased, a divorce occurring after the original purchase and before the annuity payments commence under the contract will not affect the permissibility of the joint and survivor annuity benefits or other benefits under the contract, or require any adjustment to the amount or duration of benefits payable under the contract, provided that any qualified domestic relations order (within the meaning of Code § 414(p)):

1) **Provides that the former spouse is entitled to the survivor benefits under the contract.**
2) **Provides that the former spouse is treated as a surviving spouse for purposes of the contract.**
3) **Does not modify the treatment of the former spouse as the beneficiary under the contract who is entitled to the survivor benefits; or**
4) **Does not modify the treatment of the former spouse as the measuring life for the survivor benefits under the contract.**

Sample Adoption Agreement Language:

(Note to reviewer: The following election is optional. If checked, it applies to contracts purchased or received in an exchange on or after July 2, 2014.)

____ An employee may rescind the purchase of the contract within a period not exceeding ____ (not to exceed 90) days from the date of purchase.

33. [RESERVED]

34. Separate accounts for each employee

Statement of Requirement: **Code §§ 402A(b)(2), 402A(e)(1)(B) and 414(i)**

Sample Plan Language:

A separate account will be maintained for each employee to which will be credited the employer contributions and earnings thereon. If in addition to employer contributions, the plan accepts pre-tax elective deferrals, Roth elective deferrals, deferrals to pension-linked emergency savings accounts, Roth nonelective contributions, or Roth or pre-tax matching contributions (and earnings thereon), a separate accounting will be made for each of these other contribution types.

(Note to reviewer: For plan years beginning after December 31, 2023, a defined contribution plan may include pension-linked emergency savings accounts (PLESAs) funded by matched or unmatched elective deferrals, as described in Code § 402A(e). The above sample plan language reflects only that if included, such accounts must be separately accounted for. Sample plan language for PLESAs is not included as this statutory change was not included on the Cumulative List. For guidance, see Notice 2024-22. See also CODA LRM III.)

EMPLOYEE CONTRIBUTIONS

35. Contributions subject to ACP test

Statement of Requirement: **Code § 401(m)**

(Note to reviewer: If a plan provides for contributions that are subject to the special nondiscrimination requirements of § 401(m), it must satisfy the applicable provisions in CODA LRM IX.)

(Note to reviewer: LRM provisions #36 and #37 are required if the plan accepts nondeductible employee contributions or previously permitted but has discontinued such contributions.)

Sample Plan Language:

If elected in the Adoption Agreement, the Plan will accept After-Tax Employee Contributions. A separate account will be maintained for the After-Tax Employee Contributions of each Participant.

Sample Adoption Agreement Language:

Participants:

[ ] may

[ ] may not

make employee contributions on an after-tax basis.

(Note to reviewer: See LRM #25 regarding after-tax <u>employer</u> contributions, reflecting changes made by Section 604 of the SECURE Act of 2022. See CODA LRM III for Roth contributions.)

36. Separate account - nondeductible employee contributions

Statement of Requirement: **Code § 411(c)(2).**

Sample Plan Language: (The plan may use either provision #1 or #2.)

Provision #1: A separate account will be maintained for the nondeductible employee contributions of each participant.

Provision #2: The account balance derived from nondeductible employee contributions is the employee's total account balance multiplied by a fraction, the numerator of which is the total amount of nondeductible employee contributions less withdrawals and the denominator of which is the sum of the numerator and the total contributions made by the employer on behalf of the employee less withdrawals. For this purpose, contributions include contributed amounts used to provide ancillary benefits and withdrawals include only amounts distributed to the employee and do not reflect the cost of any death benefits.

37. Nonforfeitability of employee contributions

Statement of Requirement: **Code § 411(a)(l).**

Sample Plan Language:

Employee Contributions and earnings thereon are nonforfeitable at all times.

38. Deductible voluntary employee contributions

Statement of Requirement: **Code § 219.**

(Note to reviewer: The following provision is required if the plan permitted deductible employee contributions prior to January 1, 1987.)

Sample Plan Language:

The plan administrator will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate account which will be nonforfeitable at all times. The account will share in the gains and losses under the plan in the same manner as described in section _____of the plan. No part of the deductible voluntary contribution account will be used to purchase life insurance. Subject to section ____, Joint and survivor annuity requirements (if applicable), the participant may withdraw any part of the deductible voluntary contribution account by making a written application to the plan administrator.

(Note to reviewer: The first fill-in blank above should reference any section of the

plan addressing the crediting of earnings to participant accounts. The second fill-in blank should correspond to the plan's joint and survivor annuity requirements section.)

(Note to reviewer: See LRM #38A for Roth deemed IRAs and CODA LRM III for Roth Elective Deferrals.)

38A. Deemed IRAs

Statement of Requirement: Code § 408(q); Reg. § 1.408(q)-1

(Note to reviewer: IRC § 408(q) and Reg. § 1.408(q)-1 provide that a defined contribution plan may allow employees to make voluntary employee contributions to a separate account or annuity established under the plan which, if that account or annuity meets the applicable requirements of § 408 or § 408A, will be treated as an individual retirement plan. In general, the defined contribution plan and the "deemed IRA" are treated as separate entities with each entity subject to the rules generally applicable to it.

To establish a deemed IRA (whether a traditional IRA or a Roth IRA), the plan must address every applicable point of the IRA LRMs. Thus, a plan with a deemed individual retirement annuity must satisfy the requirements of § 408(b). Similarly, a plan with a deemed individual retirement account must satisfy the requirements of § 408(a) except for the prohibition in § 408(a)(5) which is expressly excepted under § 408(q). Accordingly, the assets of a deemed IRA may be commingled for investment purposes with the other assets of the plan. However, the plan must restrict the commingling of deemed IRA assets with non-plan assets.

Deemed individual retirement accounts may be held in separate individual trusts, a single trust separate from a trust maintained by the defined contribution plan, or in a single trust that includes the defined contribution plan. If deemed IRAs are held in a single trust that includes the defined contribution plan, the plan must provide that the trustee must maintain a separate account for each deemed IRA.

Deemed individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. Where a single annuity contract is used, separate accounting for the interest of each participant is required. Also, the contract must be separate from any annuity contract of the plan.)

Sample Plan Language:

Beginning in 2024, required minimum distributions (as specified in section ___ of the plan) are not required to begin prior to the death of the owner of a deemed Roth IRA account.

(Note to reviewer: Insert the section of the plan that corresponds to the Sample Plan Language provided by LRM #49, section 1.2.)

Sample Adoption Agreement Language:

Check if these optional sections apply**.**

(____) Beginning in 2024, a deemed Roth IRA account will accept a trustee-to-trustee transfer from a long-term qualified tuition program to the extent provided in Code section 529(c)(3)(E).

(____) The deemed IRA owner may make a one-time election for a qualified charitable distribution up to $50,000 (as indexed) to a split-interest entity (defined in Code section 664(d)(1)) if the requirements of Code section 408(d)(8)(F) are met.

(Note to reviewer: Section J of Notice 2024-2, 2024-1 I.R.B. 119, extends the deadline for plans to be amended to reflect the applicable provisions of the SECURE Act, section 104 of the Miners Act, sections 2202 and 2203 of the CARES Act, section 302 of the Relief and the SECURE 2.0 Act of 2022. Note that the deadline with respect to a deemed IRA described in Code § 408(q) is determined with respect to the deadline applicable to the plan under which the deemed IRA is established. See Q&A J-1 of Notice 2024-2.)

FORFEITURE PROVISIONS

39. Treatment and allocation of forfeitures

Statement of Requirement: **Code § 401(a)(8); Reg. §§ 1.401-1(b)(i) and (ii), 1.401-7(a)**

Sample Plan Language:

(Target benefit plans must use #1 and other plans may use either #1 or #2)

Provision #1: Any forfeitures occurring will reduce employer contributions for the next plan year.

Provision #2: Forfeitures will be allocated in the ratio that the compensation of each participant bears to that of all participants for the plan year in which the forfeiture occurs.

(Note to reviewer: If the plan provides for either a uniform points allocation formula consistent with LRM #25A or permitted disparity consistent with LRM #29, the above plan language should provide that forfeitures will be allocated in accordance with the allocation formula of the plan.)

(Note to reviewer: Proposed regulations, effective for plan years beginning on or after January 1, 2024, would generally require that plan administrators use forfeitures no later than 12 months after the close of the plan year in which the forfeitures are incurred. This provides a single deadline for the use of forfeitures that applies for all types of defined contribution plans, similar to the deadline under Treas. Reg. § 1.401(k)-2(b)(2)(v) regarding a § 401(k) plan's correction of excess contributions. These regulations also propose a transition rule for forfeitures incurred for any plan year beginning prior to January 1, 2024. See Prop. Treas. Reg. 1.401-7(b), 99 Fed. Reg. 12282 (2023). Plan sponsors may but are not required to include plan language in conjunction with Provision #1 or #2 incorporating this rule.)

40. Forfeitures - withdrawal of employee contributions

Statement of Requirement: **Code § 401(a)(19)**

Sample Plan Language:

No forfeitures will occur solely as a result of an employee's withdrawal of employee contributions.

41. Reinstatement of benefit

Statement of Requirement: **Reg. § 1.411(a)-(4)(b)(6)**

Sample Plan Language:

If a benefit is forfeited because the participant or beneficiary cannot be found, such benefit will be reinstated if a claim is made by the participant or beneficiary.

DISTRIBUTION PROVISIONS

42. Joint and survivor annuity, qualified optional survivor annuity, and preretirement survivor annuity requirements

Statement of Requirement: **Code §§ 401(a)(11), 417; Reg. §§ 1.401(a)-20, 1.417(a)(3)-1, 1.417(e)-1, & 301.7701-18; Notice 2007-7, 2007-1 C.B. 395; Notice 2008-30, 2008-1 C.B. 638; Notice 2014-19, 2014-17 I.R.B. 979; Rev. Rul. 2012-3, 2012-8 I.R.B. 383.**

(Note to reviewer: The survivor annuity requirements of IRC §§ 401(a)(11) and 417 apply to all plans subject to the funding standards of § 412 (i.e., money purchase pension plans, including target benefit plans). For these plans, the provisions in LRM #42 are required.

The survivor annuity requirements do not apply to defined contribution plans (other than money purchase and target benefit plans) that meet all of the following requirements: a) the plan provides that the participant's nonforfeitable accrued benefit is payable in full, on the participant's death, to the surviving spouse (unless the participant elects with spousal consent that the benefit be paid instead to a designated beneficiary); b) the participant does not elect to receive benefits in the form of a life annuity; and c) the plan is not a transferee or offset plan with respect to the participant.

Requirements b) and c) are applied on a participant-by-participant basis. Therefore, a profit-sharing or stock bonus plan, for example, could be subject to the survivor annuity requirements of §§ 401(a)(11) and 417 with respect to some participants but not others. In such a case, the plan provisions in LRM #42 are required.

Additionally, if the plan offers a life annuity benefit option and the participant selects this option, the survivor annuity requirements will thereafter apply with respect to that participant's benefits under the plan. Thus, in this situation, the survivor annuity requirements may apply under the plan on a participant-by-participant basis. Also, if there is a separate accounting of the account balance subject to the participant's life annuity election, the plan may provide that the survivor annuity requirements apply only to that part of the account balance.

If a plan otherwise exempt from these survivor annuity requirements offers a deferred annuity contract as an investment option, the plan is subject to the survivor annuity requirements discussed above and set forth below with respect to that deferred annuity (if the annuity does not allow the participant to elect another form of benefit prior to the annuity starting date). A plan that offers a deferred annuity contract as an investment option that allows a participant to elect another form of benefit is not subject to the survivor annuity requirements until the participant elects to receive a life annuity option. A participant is deemed to have elected to receive a life annuity on the annuity starting date if the participant has not elected another form of benefit prior to the annuity starting date. In such cases, the following plan provisions are required. The remainder of the participant's account is not subject to the survivor annuity requirements if the account is otherwise not subject to the survivor annuity requirements and the plan separately accounts for the deferred annuity contract. See Rev. Rul. 2012-3.)

Sample Plan Language:

Article _____. JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

Section 1. The provisions of this article shall apply to any participant who is credited with at least one hour of service with the employer on or after August 23, 1984, and such other participants as provided in section 7.

Section 2. Qualified Joint and Survivor Annuity.

2.1. Unless an optional form of benefit is selected pursuant to a qualified election within the 180-day period (90-day period for plan years beginning before January 1, 2007) ending on the annuity starting date, a married participant's vested account balance will be paid in the form of a qualified joint and survivor annuity and an unmarried participant's vested account balance will be paid in the form of a life annuity. The participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the plan.

Section 3. Qualified Optional Survivor Annuity

3.1 For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period.

Section 4. Qualified Preretirement Survivor Annuity.

4.1. Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a participant dies before the annuity starting date then the participant's vested account balance shall be applied toward the purchase of an annuity for the life of the surviving spouse. The surviving spouse may elect to have such annuity distributed within a reasonable period after the participant's death.

(Note to reviewer: The above provision does not provide for a forfeiture of any portion of the participant's vested interest. However, upon the death of the participant, the plan may provide for a forfeiture if no less than 50 percent of the vested portion of the participant's employer-derived account balance is used to purchase an annuity for the surviving spouse. Alternatively, the plan may provide that no less than 50 percent of the vested account balance will be used to purchase an annuity for the surviving spouse and the remaining portion shall be paid to other beneficiaries of the participant. However, to the extent that less than 100% of the account balance is paid to the surviving spouse, the plan must provide that the amount of the participant's employee-derived account allocated to the surviving spouse will be in the same proportion as the employee-derived account balance is to the total account balance of the participant.)

Section 5. Definitions.

5.1. Election period: The period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death. If a participant separates from service prior to the first day of the plan year in which age 35 is attained, with respect to the account balance as of the date of separation, the election period shall begin on the date of separation.

Pre-age 35 waiver: A participant who will not yet attain age 35 as of the end of any current plan year may make a special qualified election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the plan year in which the participant will attain age 35. Such election shall not be valid unless the participant receives a written explanation of the qualified preretirement survivor annuity in such terms as are comparable to the explanation required under section 6.1. Qualified preretirement survivor annuity coverage will be automatically reinstated as of the first day of the plan year in which the participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this article.

5.2. Earliest retirement age: The earliest date on which, under the plan, the participant could elect to receive retirement benefits.

5.3. Qualified election: A waiver of a qualified joint and survivor annuity or a qualified preretirement survivor annuity. Any waiver of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall not be effective unless: (a) the participant's spouse consents in writing to the election; (b) the election designates a specific beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a plan representative or notary public. Additionally, a participant's waiver of the qualified joint and survivor annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the participant without any further spousal consent). If it is established to the satisfaction of a plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a qualified election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the participant has

received notice as provided in section 6 below.

5.4. Qualified joint and survivor annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and which is the amount of benefit which can be purchased with the participant's vested account balance. The percentage of the survivor annuity under the plan shall be 50% (unless a different percentage is elected by the employer in the adoption agreement).

(Note to reviewer: If the language in parenthesis is used, a provision should be added to the adoption agreement to enable the employer to elect the percentage (not less than 50%, not more than 100%) of the survivor annuity.)

5.5 Qualified Optional Survivor Annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and which is the amount of benefit which can be purchased with the participant's vested account balance. If the percentage of the survivor annuity is less than 75%, the applicable percentage is 75%. If the percentage of the survivor annuity is greater than or equal to 75%, the applicable percentage is 50%.

5.6. Spouse (surviving spouse): The spouse or surviving spouse of the participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Code.

5.7. Annuity starting date: The first day of the first period for which an amount is paid as an annuity or any other form.

5.8. Vested account balance: The aggregate value of the participant's vested account balances derived from employer and employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the participant's life. The provisions of this article shall apply to a participant who is vested in amounts attributable to employer contributions, employee contributions (or both) at the time of death or distribution.

Section 6. Notice Requirements.

6.1. In the case of a qualified joint and survivor annuity, the plan administrator shall no less than 30 days and no more than 180 days prior to the annuity starting date provide each participant a written explanation of: (i) the terms and conditions of a qualified joint and survivor annuity and the qualified optional survivor annuity; (ii) the participant's right to make and the effect of an election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a participant's spouse; and (iv) the right to

make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity. The written explanation shall comply with the requirements of section 1.417(a)(3)-1 of the Regulations.

The annuity starting date for a distribution in a form other than a qualified joint and survivor annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the participant has been provided with information that clearly indicates that the participant has at least 30 days to consider whether to waive the qualified joint and survivor annuity and elect (with spousal consent) to a form of distribution other than a qualified joint and survivor annuity; (b) the participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the qualified joint and survivor annuity is provided to the participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the participant.

(Note to reviewer: The plan may provide that the annuity starting date may be a date prior to the date the written explanation is provided to the participant if the distribution does not commence until at least 30 days after such written explanation is provided, subject to the waiver of the 30-day period as provided for in the above paragraph.)

6.2. In the case of a qualified preretirement survivor annuity as described in section 4 of this article, the plan administrator shall provide each participant within the applicable period for such participant a written explanation of the qualified preretirement survivor annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of section 6.1 applicable to a qualified joint and survivor annuity. The written explanation shall comply with the requirements of section 1.417(a)(3)-1 of the Regulations.

The applicable period for a participant is whichever of the following periods ends last: (i) the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35; (ii) a reasonable period ending after the individual becomes a participant; (iii) a reasonable period ending after section 6.3 ceases to apply to the participant; (iv) a reasonable period ending after this article first applies to the participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two-year period beginning one year prior to the date the applicable event occurs and ending one year after that date. In the case of a participant who separates from service before the plan year in

which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a participant thereafter returns to employment with the employer, the applicable period for such participant shall be re-determined.

6.3. Notwithstanding the other requirements of this section 6, the respective notices prescribed by this section need not be given to a participant if (1) the plan "fully subsidizes" the costs of a qualified joint and survivor annuity or qualified preretirement survivor annuity, and (2) the plan does not allow the participant to waive the qualified joint and survivor annuity or qualified preretirement survivor annuity and does not allow a married participant to designate a non-spouse beneficiary. For purposes of this section 6.3, a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the participant may result from the participant's failure to elect another benefit.

Section 7. Safe harbor rules.

7.1. This section shall apply to a participant in a profit-sharing plan, and to any distribution from or under a separate account attributable solely to accumulated deductible employee contributions, as defined in section 72(o)(5)(B) of the Code, and maintained on behalf of a participant in a money purchase pension plan, (including a target benefit plan) if the following conditions are satisfied: (1) the participant does not or cannot elect payments in the form of a life annuity; and (2) on the death of a participant, the participant's vested account balance will be paid to the participant's surviving spouse, but if there is no surviving spouse, or if the surviving spouse has consented in a manner conforming to a qualified election, then to the participant's designated beneficiary. The surviving spouse may elect to have distribution of the vested account balance commence within the 90-day period following the date of the participant's death. The account balance shall be adjusted for gains or losses occurring after the participant's death in accordance with the provisions of the plan governing the adjustment of account balances for other types of distributions. This section 7 shall not apply with respect to a participant in a profit-sharing plan if the plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, or target benefit plan, or a stock bonus or profit-sharing plan which is either subject to the survivor annuity requirements of sections 401(a)(11) and 417 of the Code, or offsets benefits under a plan subject to these requirements. If this section 7 applies, then the provisions of this article, other than section 8, shall be inoperative.

7.2. The participant may waive the spousal death benefit described in this section at any time provided that no such waiver shall be effective unless it satisfies the conditions of section 5.3 (other than the notification requirement referred to therein) that would apply to the participant's waiver of the qualified preretirement survivor annuity.

7.3 For purposes of this section 7, vested account balance shall mean, in the case of a money purchase pension plan or a target benefit plan, the participant's separate account

balance attributable solely to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code. In the case of a profit-sharing plan, vested account balance shall have the same meaning as provided in section 5.7.

(Note to reviewer: Profit-sharing plans satisfying all of the requirements of LRM section 7.1 for a participant such that the plan is not required to provide a qualified joint and survivor annuity for the participant, but that do provide such annuity (even if the annuity is the normal form), may replace the qualified joint and survivor annuity with payment in a single-sum distribution form that is otherwise identical to such annuity in accordance with the requirements under Reg. § 1.411(d)-4 Q&A 2(e).)

Section 8. QLAC purchased with joint and survivor annuity benefits.

In the case of a QLAC purchased with joint and survivor benefits, a domestic relations order will not affect the permissibility of the joint and survivor annuity benefits so long as certain requirements are met as specified in section _____ (refer to the section of the plan which includes the sample plan language suggested by LRM #32).

(Note to reviewer: Any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. See the definition of spouse in Reg. § 301-7701-18. For example, a participant in a plan subject to the rules of § 401(a)(11) who is married to a same-sex spouse cannot waive a QJSA without obtaining spousal consent pursuant to § 417. See Notice 2015-86, 2015-52, I.R.B. 887. See also the Note to reviewer at LRM #49 for additional provisions affected.)

43. Vesting on distribution before break-in-service, cash-outs

Statement of Requirement: **Code §§ 411(a)(11), 401(a)(31)(B); Reg. §§ 1.411(a)-6(c)(1)(ii), 1.411(a)-7(d)(4) and (5); Notice 2005-5, 2005-1 C.B. 337**

(Note to reviewer: If the plan permits distribution of the account balance derived from employer contributions at a time when the participant may increase the nonforfeitable percentage in such account, it must use provision #1 or #2. Provision #1 provides for immediate forfeiture of nonvested amounts upon distribution of the employee's entire vested account balance on termination of service. Provision #2 applies if the plan provides for delayed forfeiture. Profit-sharing plans which provide for in-service distributions must include provision #2.)

(Note to reviewer: Section 304 of the SECURE 2.0 Act of 2022 increases the limit for mandatory retirement plan distributions to be automatically rolled over to an

IRA from $5,000 to $7,000, effective for distributions made after December 31, 2023. See below and LRM #44 for sample plan language changes in this regard.)

Provision #1

If elected by the Employer in the adoption agreement, and an employee terminates service, and the value of the employee's vested account balance derived from employer and employee contributions is not greater than $5,000 ($7,000 for distributions made after December 31, 2023) (or such lesser amount as selected by the employer in the adoption agreement), the employee will receive a distribution of the value of the entire vested portion of such account balance and the nonvested portion will be treated as a forfeiture.

If an employee would have received a distribution under the preceding but for the fact that the employee's vested account balance exceeded $5,000 ($7,000 for distributions made after December 31, 2023, or such lesser amount as selected by the employer in the adoption agreement) when the employee terminated service and if at a later time such account balance is reduced such that it is not greater than $5,000 ($7,000 for distributions made after December 31, 2023, or such lesser amount as selected by the employer in the adoption agreement), the employee will receive a distribution of such account balance and the nonvested portion will be treated as a forfeiture. Any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distributions as a direct rollover to an individual retirement plan for distributions in excess of $1,000).

For purposes of this section, if the value of an employee's vested account balance is zero, the employee shall be deemed to have received a distribution of such vested account balance. A participant's vested account balance shall not include: (1) accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code for plan years beginning prior to January 1, 1989, and (2) if elected by the employer in the adoption agreement, the portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Code.

If an employee terminates service, and elects, in accordance with the requirements of section _____, to receive the value of the employee's vested account balance, the nonvested portion will be treated as a forfeiture. If the employee elects to have distributed less than the entire vested portion of the account balance derived from employer contributions, the part of the nonvested portion that will be treated as a forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to employer contributions and the denominator of which is the total value of the vested employer derived account balance.

(Note to reviewer: The blank should be filled in with the plan section number which

corresponds to LRM #44.)

If an employee receives or is deemed to receive a distribution pursuant to this section and the employee resumes employment covered under this plan, the employee's employer-derived account balance will be restored to the amount on the date of distribution if the employee repays to the plan the full amount of the distribution (without regard to gains/losses) before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the date the participant incurs 5 consecutive 1-year breaks in service following the date of the distribution. If an employee is deemed to receive a distribution pursuant to this section, and the employee resumes employment covered under this plan before the date the participant incurs 5 consecutive 1-year breaks in service, upon the reemployment of such employee, the employer-derived account balance of the employee will be restored to the amount on the date of such deemed distribution.

Provision #2

If a distribution is made at a time when a participant has a nonforfeitable right to less than 100 percent of the account balance derived from employer contributions and the participant may increase the nonforfeitable percentage in the account:

(1) A separate account will be established for the participant's interest in the plan as of the time of the distribution, and

(2) At any relevant time, the participant's nonforfeitable portion of the separate account will be equal to an amount ("X") determined by the formula:

$$X = P(AB + (R \times D)) - (R \times D)$$

For purposes of applying the formula: P is the nonforfeitable percentage at the relevant time, AB is the account balance at the relevant time, D is the amount of the distribution, and R is the ratio of the account balance at the relevant time to the account balance after distribution.

(Adoption agreement provisions)

Application of Involuntary Cash-out provisions:

A1. ( ) $ _____ For distributions made on or before December 31, 2023, enter an amount from 0 to $5,000, which will be the value of the employee's vested account balance for purposes of the plan's involuntary cash-out rules.

A2. ( ) $ _____ For distributions made after December 31, 2023, enter an amount from 0 to $7,000, which will be the value of the employee's vested account balance for purposes of the plan's involuntary cash-out rules.

B. The employer:

( ) elects to exclude rollover contributions in determining the value of the participant's nonforfeitable account balance for purposes of the plan's involuntary cash-out rules.

C. If the employer has elected to exclude rollover contributions, the election shall apply with respect to distributions made after _____ (ENTER A DATE NO EARLIER THAN DECEMBER 31, 2001) with respect to participants who separated from service after _____. (ENTER DATE. THE DATE MAY BE EARLIER THAN DECEMBER 31, 2001.)

44. Restrictions on immediate distributions

Statement of Requirement: **Code §§ 411(a)(11), 417(e)(2); Reg. §§ 1.411(a)-11, 1.417(e)-1, 1.401(a)-20; Rev. Proc. 93-47, 1993-2 C.B. 385; Rev. Rul. 2004-10, 2004-1 C.B. 484, Notice 2007-7, 2007-1 C.B. 395; Prop. Reg. § 1.411(a)-11**

Sample Plan Language:

If payment in the form of a qualified joint and survivor annuity is required with respect to a participant and either the value of a participant's vested account balance derived from employer and employee contributions exceeds $5,000 ($7,000 for distributions made after December 31, 2023) or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the account balance is immediately distributable, the participant must consent to any distribution of such account balance.

If payment in the form of a qualified joint and survivor annuity is not required with respect to a participant and the value of a participant's vested account balance derived from employer and employee contributions exceeds $5,000 ($7,000 for distributions made after December 31, 2023), and the account balance is immediately distributable, the participant must consent to any distribution of such account balance.

The plan administrator shall notify the participant and the participant's spouse of the right to defer any distribution until the participant's account balance is no longer immediately distributable and the consequences of failing to defer any distribution. Such notification shall include a general description of the material features, an explanation of the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of section 417(a)(3), and a description of the consequences of failing to defer a distribution and shall be provided no less than 30 days and no more than 180 days prior to the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The consent of the

participant and the participant's spouse shall be obtained in writing within the 180-day period ending on the annuity starting date. However, distribution may commence less than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which sections 401(a)(11) and 417 of the Internal Revenue Code do not apply, the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the participant, after receiving the notice, affirmatively elects a distribution.

Notwithstanding the foregoing, only the participant needs to consent to the commencement of a distribution in the form of a qualified joint and survivor annuity while the account balance is immediately distributable. (Furthermore, if payment in the form of a qualified joint and survivor annuity is not required with respect to the participant pursuant to section _____ of the plan, only the participant needs to consent to the distribution of an account balance that is immediately distributable). Neither the consent of the participant nor the participant's spouse shall be required to the extent that a distribution is required to satisfy section 401(a)(9) or section 415 of the Code. In addition, upon termination of this plan if the plan does not offer an annuity option (purchased from a commercial provider) and if the employer or any entity within the same controlled group as the employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code), the participant's account balance will, without the participant's consent, be distributed to the participant. However, if any entity within the same controlled group as the employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code) then the participant's account balance will be transferred, without the participant's consent, to the other plan if the participant does not consent to an immediate distribution.

(Note to reviewer: The above sample plan parenthetical requiring only the participant's consent for immediately distributable amounts applies only if the plan meets the safe harbor joint and survivorship requirements contained in section 7 of LRM #42.)

An account balance is immediately distributable if any part of the account balance could be distributed to the participant (or surviving spouse) before the participant attains or would have attained (if not deceased), the later of normal retirement age or age 62.

44A. Money purchase (including target benefit) plans – restriction on in-service distributions

Statement of Requirement: **Code § 401(a)(36); Reg. §§ 1.401-1(b)(1)(i) & (ii); Notice 2012–29, 2012–18 I.R.B. 872**

(Note to reviewer: The SECURE 2.0 Act of 2022 added several distribution restrictions applicable to employer contributions under a profit-sharing plan. For example, profit-sharing plans can make an in-service Lifetime Income Investment Distribution (LRM #69), Qualified Birth or Adoption Distribution, Coronavirus-Related Distribution (LRM #77) or a Distribution for Domestic Abuse Victims (see CODA LRM XVI).)

Sample Plan Language:

A participant's benefit under the plan may not be distributed before the participant attains age 59 ½ (age 62 for plan years beginning before January 1, 2020) or, if earlier, the participant separates from employment, attains normal retirement age under the plan, dies, or becomes disabled, or upon termination of the plan.

(Note to reviewer: See the discussion regarding normal retirement ages earlier than age 62 accompanying LRM # 14A.)

45. Commencement of benefits

Statement of Requirement: **Code § 401(a)(14); Reg. § 1.411(a)-11(c)(7)**

Sample Plan Language:

Unless the participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the plan year in which:

(1) the participant attains age 65 (or normal retirement age, if earlier);

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan; or,

(3) the participant terminates service with the employer.

Notwithstanding the foregoing, the failure of a participant and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of section ___ of the plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

(Note to reviewer: The blank should be filled in with the section number corresponding to LRM #44.)

(Note to reviewer: Effective for distributions made after December 31, 2023, the dollar limit for immediately distributable amounts was increased from $5,000 to $7,000. See LRM 44 for sample plan language in this regard.)

46. Early retirement with age and service requirement

Statement of Requirement: **Code § 401(a)(14)**

Sample Plan Language:

If a participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement.

47. Non-transferability of annuities

Statement of Requirement: **Code § 401(g)**

Sample Plan Language:

An annuity contract used to fund the Plan must be nontransferable if any person other than the trustee is the owner of the contract.

48. Conflicts with annuity contracts

Statement of Requirement: **Reg. § 1.401(a)-20, Q&A-2**

Sample Plan Language:

The terms of any annuity contract purchased and distributed by the plan to a participant or spouse shall comply with the requirements of this plan. In the event of any conflict between the terms of this Plan and the terms of any annuity contract or investment under the Plan or any other document incorporated by reference under the Plan, the terms of the Plan will govern.

49. Timing and modes of distribution

Statement of Requirement: **IRC § 401(a)(9); Reg. § 1.401(a)(9), § 1.411(d)-4, Q&A-10; Prop. Reg. § 1.401(a)(9)-1 (87 Fed. Reg. 10504, Feb. 24, 2022); Announcement 97-24, 1997-11 I.R.B. 24; Notice 97-75, 1997-2 C.B. 337; Rev. Proc. 2002-29, 2002-1 C.B. 1176; Notice 2009-82, 2009-2 C.B. 491; Rev. Rul. 2013-17; Notice 2014-19; Notice 2015-86; Notice 2020-51, 2020-29 IRB 73; Notice 2022-53, 2022-44 I.R.B. 1**

Sample Plan Language:

Article _____. REQUIRED MINIMUM DISTRIBUTIONS

Section 1. General Rules.

1.1. Subject to Article _____, Joint and Survivor Annuity Requirements, the requirements of this article shall apply to any distribution of a participant's interest and will take precedence over any inconsistent provisions of this plan.

1.2. All distributions required under this article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.

1.3 Limits on Distribution Periods. As of the first distribution calendar year, distributions to a participant, if not made in a single sum, may only be made over one of the following periods:

(a) the life of the participant,

(b) the joint lives of the participant and a designated beneficiary,

(c) a period certain not extending beyond the life expectancy of the participant, or

(d) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

Section 2. Time and Manner of Distribution.

2.1 Required Beginning Date. The participant’s entire interest will be distributed, or begin to be distributed, to the participant no later than the participant’s required beginning date.

2.2 Death of Participant Before Distributions Begin. If the participant dies before distributions begin, the participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant’s surviving spouse is the participant’s sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained the Applicable Age, defined below, if later.

(b) If the participant’s surviving spouse is not the participant’s sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse are required to begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3 Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the regulations.

Section 3. Required Minimum Distributions During Participant's Lifetime.

3.1 Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2 of the regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or

(b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3 of the regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar

year.

3.2 Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the participant's date of death.

Section 4. Required Minimum Distributions After Participant's Death.

4.1.A Death Prior to January 1, 2020, On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies prior to January 1, 2020, on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows:

(1) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of the September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

4.1.B Death On or After January 1, 2020, On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies on or after January 1, 2020, on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows:

(1) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant's surviving spouse is the participant's sole designated beneficiary, the applicable distribution period is measured by the surviving spouse's life expectancy using the surviving spouse's birthday for each distribution calendar year after the calendar year of the participant's death. The surviving spouse's remaining life expectancy is redetermined each distribution calendar year using the surviving spouse's age as of the surviving spouse's birthday in that distribution calendar year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the participant's surviving spouse is not the participant's sole designated beneficiary and there is an Eligible Designated Beneficiary, the Eligible Designated Beneficiary's remaining life expectancy is calculated using the age of the Eligible Designated Beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(4) If the participant's surviving spouse is not the participant's sole designated beneficiary and there is no Eligible Designated Beneficiary, the entire interest must be distributed by the end of the calendar year that includes the tenth anniversary of the date of the Participant's death. In addition, if there is a designated beneficiary but not an Eligible Designated Beneficiary, distributions must begin by December 31st of the calendar year immediately following the calendar year in which the participant died based on the longer of the life expectancy of the designated beneficiary or the deceased participant. However, for the 2021 and 2022 calendar years, distributions are not required.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of the September 30 of the year after the year of the participant's death, such as where no individual is named as the beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated

using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2A Death Prior to January 1, 2020, Before Date Distributions Begin

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1A.

(b) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

4.2.B Death on or after January 1, 2020, Before Distributions Begin

(a) If the participant dies before the date distribution begins and the surviving spouse is the sole beneficiary, distribution must begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained the Applicable Age, if later.

(1) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 4.2.B(a), this section 4.2B will apply as if the surviving spouse were the participant.

(b) Participant Survived by Eligible Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is an Eligible Designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is determined initially using the beneficiary's age as of his birthday in the calendar year following the

calendar year of the Participant's death. For subsequent calendar years, the designated beneficiary's remaining life expectancy is determined by reducing that initial life expectancy by one for each calendar year that has elapsed after the first calendar year.

(1) Death of Eligible Designated Beneficiary. If the participant dies before the date distributions begin and is survived by an Eligible Designated Beneficiary and the surviving Eligible Designated Beneficiary dies or reaches the age of majority before distributions are required to begin to the Eligible Designated Beneficiary under section 4.2.B(b), distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the tenth anniversary of the participant's death.

(c) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the tenth anniversary of the participant's death.

(d) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

Section 5. Definitions

5.1 Applicable Age.

(a) In the case of an individual who attains age 70 before July 1, 2019, the Applicable Age is 70 ½.

(b) In the case of an individual who attains age 70 on or after July 1, 2019, the Applicable Age is 72.

(c) In the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033, the Applicable Age is 73.

(Note to reviewer: Section 107 of the SECURE 2.0 Act of 2022 increases the required minimum distribution age to age 73 starting on January 1, 2023 and increases the age further to age 75 starting on January 1, 2033. That change was not included on the Cumulative List, so plan language is not provided in this regard.)

5.2 Designated beneficiary. The individual who is designated by the participant (or the participant's surviving spouse) as the beneficiary of the participant's interest

under the plan and who is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the regulations.

5.3 Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

5.4 Eligible Designated Beneficiary. An eligible designated beneficiary is the individual designated by the participant (or the participant's surviving spouse) and who will receive the participant's interest under the plan and who is:

(a) The surviving spouse of the participant,

(b) A child of the participant who has not reached majority,

(c) Disabled,

(d) A chronically ill individual, or

(e) An individual not described above who is not more than 10 years younger than the participant.

(Note to reviewer: Rules for determining whether an individual is an eligible designated beneficiary are determined under § 401(a)(9)(E) and (H) and applicable regulations thereunder.)

5.5 Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.

5.6 Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5.7 Required Beginning Date: Required Beginning Date shall have the meaning as selected by the employer in the Adoption Agreement.

5.8 5-percent owner. A participant is treated as a 5-percent owner for purposes of this section 5 if such participant is a 5-percent owner as defined in section 416 of the Code at any time during the plan year ending with or within the calendar year in which such owner attains age 70½.

Once distributions have begun to a 5-percent owner under this section 5, they must continue to be distributed, even if the participant ceases to be a 5-percent owner in a subsequent year.

Section 6. 2020 Required Minimum Distributions

6.1 Notwithstanding section _____ of the plan, a participant or beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of section 401(a)(9)(I) of the Code ("2020 required minimum distributions"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 required minimum distributions, or (2) one or more payments (that include the 2020 required minimum distributions) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2020 required minimum distributions"), will receive those distributions determined in accordance with the option chosen by the employer in the adoption agreement. Notwithstanding the option chosen by the employer in the adoption agreement, a participant or beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions.

6.2 In addition, notwithstanding section _____ of the plan, and solely for purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2020, as chosen by the employer in the adoption agreement, will be treated as eligible rollover distributions.

6.3 If no election is made by the employer in the adoption agreement, a direct rollover will be offered only for distributions that would be eligible rollover distributions in the absence of section 401(a)(9)(I) of the Code.

(Note to reviewer: For purposes of Section 6 above, the first blank should contain the section of the plan corresponding to the preceding sections of this LRM # 49 (and the section of the plan dealing with other distributions, if applicable) and the second blank should contain the section of the plan corresponding to LRM # 51.)

(Note to reviewer: For purposes of the sample plan language in Section 6 above, if

plan language automatically suspends a distribution of amounts equal to the 2020 required minimum distribution to a participant or beneficiary pursuant to § 401(a)(9)(I), then a plan amendment to eliminate the right to defer that distribution would also violate § 411(d)(6)(B). By contrast, an employer will not have eliminated an optional form of benefit in violation of § 411(d)(6)(B) merely because the plan's default for whether a distribution occurs in the absence of a participant's or beneficiary's election is different than the default for whether a distribution occurs in the absence of a plan amendment.)

Sample Adoption Agreement Language

(Check and complete sections 1 and 2 below if you wish to modify the rules in sections 2.2 and 4.2 of Article _____ of the plan.)

Section 1. Election to Apply 5-or 10-Year Rule to Distributions to Designated Beneficiaries.

( ) If the participant dies before distributions are required to begin and there is a designated beneficiary, distributions to the designated beneficiary are not required to begin by the date specified in section 2.2 of Article ___ of the plan, but the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death (for dates of death occurring on or before December 31, 2019) or the tenth anniversary of the participant's death (for dates of death occurring after December 31, 2019, if the designated beneficiary is not an eligible designated beneficiary as defined in section 5.4 of Article ___ of the plan). If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

Section 2. Election to Allow Participants or Beneficiaries to Elect 5- or 10-Year Rule.

( )Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article ___ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under section 2.2 of Article ___ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death (for dates of death occurring on or before December 31, 2019) or the calendar year which contains the tenth anniversary of the participant's (or, if applicable, surviving spouse's) death (for dates of death occurring after December 31, 2019, if the designated beneficiary is not an eligible designated beneficiary as defined in section 5.4 of Article ___ of the plan). If neither the

participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 4.2 of Article _____ of the plan and, if applicable, the elections in section 1 above.

(Note to reviewer: The 10-year rule applies as a substitute for years after December 31, 2019. Distributions based on a life expectancy factor to an Eligible Designated Beneficiary were not available prior to this date.)

Section 3. Required Beginning Date

The required beginning date of a participant is (SELECT ONE FROM AMONG OPTIONS 1-3. OPTION 4 MAY BE SELECTED ADDITIONALLY):

(Note to Reviewer: Each of the blanks following the reference to the "Applicable Age" should be filled in with the section of the plan corresponding to section 5.1 of the Sample Plan Language.)

1. ( ) April 1 of the calendar year following the calendar year in which the participant attains the Applicable Age (defined in section _____ of the plan document).

2. ( ) April 1 of the calendar year following the calendar year in which the participant attains the Applicable Age (defined in section _____ of the plan document), except that benefit distributions to a participant (other than a 5-percent owner) with respect to benefits accrued after _____ **(**INSERT THE LATER OF THE ADOPTION OR EFFECTIVE DATE OF AN AMENDMENT TO THE PLAN THAT IMPLEMENTS THE CHANGES TO THE REQUIRED BEGINNING DATE OF THIS PARAGRAPH**)** must commence by April 1 of the calendar year following the later of the calendar year in which the participant attains the Applicable Age or the calendar year in which the participant retires.

(Note to reviewer: The above blank, referring to an amendment date, refers to 1997 changes to required beginning date determinations for non-5% owners. Under these changes, for a participant (other than a 5% owner) who attained age 70½ after a specified year, relief was afforded from the applicable sections of IRC § 401(a)(9). See Notice 97-75.)

3. ( ) April 1 of the calendar year following the later of the calendar year in which the participant attains the Applicable Age (defined in section _____ of the plan document) or the calendar year in which the participant retires, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the participant attains the Applicable Age.

4. ( ) Any participant (other than a 5-percent owner) attaining the Applicable Age (as defined in section _____ of the plan document) may elect by April 1 of the calendar year following the year in which the participant attained the Applicable Age, to

defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made, the participant will begin receiving distributions by April 1 of the calendar year following the calendar year in which the participant attained the Applicable Age.

(Note to reviewer: Option 3 above may only be elected if (i) it corresponds to an amendment previously made to the plan pursuant to Reg. § 1.411(d)-4, Q&A-10(b) or (ii) it does not eliminate an Applicable Age-related distribution option, as described in this regulation.)

Section 4. 2020 Required Beginning Date

4.1 Effective date of amendment providing choice for 2020 required minimum distributions:

Section ____ of the plan providing for a choice of whether a participant or beneficiary will receive 2020 required minimum distributions is effective _____.

4.2 Treatment of 2020 required minimum distributions in the absence of a participant or beneficiary election: (Check a. or b.)

a. ( ) A participant or beneficiary who would have been required to receive a 2020 required minimum distribution will receive this distribution unless the participant or beneficiary chooses not to receive the distribution.

b. ( ) A participant or beneficiary who would have been required to receive a 2020 required minimum distribution will not receive this distribution unless the participant or beneficiary chooses to receive the distribution.

(Note to reviewer: The CARES Act provided that required minimum distributions waived for 2020 are not treated as eligible rollover distributions for purposes of Code § 401(a)(31) (relating to direct and automatic rollovers of eligible rollover distributions), § 402(f) (relating to notices to recipients of eligible rollover distributions) and § 3405(c) (relating to mandatory 20% withholding on eligible rollover distributions). In addition to the sample plan language provided below, Notice 2020-51 contains sample language providing that in the absence of an election in the adoption agreement, a direct rollover will be offered only for distributions that would be eligible rollover distributions in the absence of § 401(a)(9)(I).)

4.3 Rollover of Otherwise Required Minimum Distributions for 2020:

For purposes of the direct rollover provisions of the plan, the following will also be treated as eligible rollover distributions in 2020: (Check one or none.)

a. ( ) 2020 required minimum distributions (as defined in the plan).

b. ( ) 2020 required minimum distributions and Extended 2020 required minimum distributions (both as defined in the plan).

c.( ) 2020 required minimum distributions (as defined in the plan) but only if paid with an additional amount that is an eligible rollover distribution without regard to section 401(a)(9)(I) of the Code.

(Note to reviewer: Any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. For example, under the required minimum distribution rules of § 401(a)(9) and the rollover rules of § 402(c), certain options are provided for a surviving spouse that are not available to a non-spouse beneficiary. These options must be provided to a same-sex spouse. For a fuller description, see the Note to reviewer at LRM #42.)

50. Optional forms of benefit must be stated in the plan

Statement of Requirement: **Code §§ 401(a)(4), 411(d)(6); Reg. §§ 1.401(a)(4)-4, 1.411(d)-4; Notice 97-75, 1997-2 C.B. 337; Rev. Proc. 2023-37, sec. 9.03(5)**

Document Provision: _____

Sample Plan Language:

The optional forms of benefit provided by this plan are as follows:

(Note to reviewer: The availability of each optional form of benefit must not be subject to employer discretion.

In addition, each optional form of benefit provided under a standardized plan (other than any that has been prospectively eliminated) must be currently available to all employees benefiting under the plan. This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under the plan.

Code § 411(d)(6) prevents a plan from being amended to eliminate or restrict optional forms of benefits and any other "§ 411(d)(6) protected benefits" with respect to benefits attributable to service before the amendment except as expressly provided under Reg. § 1.411(d)-4. See also LRM #60.

Plans subject to the funding standards of § 412 (i.e., money purchase pension plans, including target benefit plans) are required to offer joint and survivor annuities. See LRM #42.).

51. Direct Rollovers

Statement of Requirement: **Code §§ 402(c), 401(a)(31); 402A(c); Reg. §§ 1.401(a)(31)-1, 1.401(k)-1(f), 1.402(c)-2; Notice 2005-5, 2005-1 C.B. 337; Notice 2007-7, 2007-1 C.B. 395; Notice 2008-30, 2008-1, C.B. 638; Notice 2009-68, 2009-39 I.R.B. 423; Notice 2009-75, 2009-39 I.R.B. 436; Notice 2010-84, 2010-51 I.R.B. 872; Notice 2013-74, 2013-52 I.R.B. 819**

Sample Plan Language:

Article _____ : Direct Rollovers

Section 1. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, provided that each portion is equal to at least $500. If an eligible rollover distribution is less than $500, a distributee may not make the election described in the preceding sentence to roll over only a portion of the eligible rollover distribution.

(Note to reviewer: A sponsor may also include a provision offering direct trustee-to-trustee transfers of Lifetime Income Investments if the plan is later amended to eliminate those investment options. See LRM 69, Lifetime Income Investment Distributions.)

(Note to reviewer: For plan years beginning after December 31, 2009, a plan is required to offer a direct rollover of a distribution to a nonspouse beneficiary. For earlier plan years, a plan was permitted but not required to offer a direct rollover of a distribution made after December 31, 2006, to a nonspouse beneficiary.)

1.1. In-Plan Roth Rollovers.

If elected by the employer in the adoption agreement, an eligible rollover distribution from a participant's account under the plan other than a designated Roth account may be transferred to the participant's designated Roth account under the plan. The plan will maintain such records as are necessary for the proper reporting of in-plan Roth rollovers.

(Note to reviewer: Beginning in 2013, IRC § 402A(c)(4)(E), as amended by § 902 of the American Taxpayer Relief Act of 2012, Pub. L. 112–240, provides that a plan may allow in-plan Roth rollovers of amounts that are not otherwise distributable. Such a change requires a discretionary amendment for the year implemented. The

amendment's effective date must be the date the plan first allows the designated Roth account transactions permitted by the amendment. See Notice 2013-74.)

Section 2. Definitions

2.1. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more,

b) any distribution to the extent such distribution is required under § 401(a)(9) of the Internal Revenue Code,

c) any hardship distribution,

d) any other distribution(s) that is reasonably expected to total less than $200 during a year,

e) any corrective distribution of excess amounts under sections 402(g), 401(k), 401(m), and/or 415(c) of the Code and income allocable thereto,

f) loans that are treated as deemed distributions under section 72(p) of the Code,

g) dividends paid on employer securities as described in section 404(k) of the Code,

h) the costs of life insurance coverage,

i) prohibited allocations that are treated as deemed distributions under section 409(p) of the Code,

j) permissible withdrawals from eligible automatic contribution arrangements under section 414(w) of the Code, and

k) distributions of premiums for accident and health insurance under section 1.402(a)-1(e)(1)(i) of the Treasury Regulations.

For purposes of the $200 rule, a distribution from a designated Roth account and a distribution from other accounts under the plan are treated as made under separate plans.

Any portion of an eligible rollover distribution that consists of after-tax employee contributions which are not includible in gross income may be transferred only to (1) a traditional individual retirement account or annuity described in sections 408(a) or (b) of the Code (a "traditional IRA") or a Roth individual retirement account or annuity described in section 408A of the Code (a "Roth IRA"); or (2) to a qualified plan or an annuity contract described in sections 401(a) and 403(b) of the Code, respectively, that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(Note to reviewer: If an employer has chosen the required beginning date described in LRM #49, Adoption Agreement section 3.1 (April 1 of the calendar year following the calendar year in which the participant reaches the Applicable Age), the statutory required beginning date (described in LRM # 49, Adoption Agreement section 3.3) applies for other purposes, including the participant's required beginning date for purposes of determining whether a distribution is an eligible rollover distribution under § 402(c).)

(**Note to reviewer: The CARES Act provided that required minimum distributions waived for 2020 are not treated as eligible rollover distributions under Code § 401(a)(31) and therefore plans are not required to offer direct rollovers of those distributions. Notice 2020-51 contains sample language providing that, in the absence of an election in the adoption agreement, a direct rollover will be offered only for distributions that would be eligible rollover distributions in the absence of section Code § 401(a)(9)(I). Notice 2020-51 also provides sample adoption agreement language for available options. See also the Sample Adoption Agreement language contained in LRM 49, section 4.3.)**

2.2. Eligible retirement plan: An eligible retirement plan is

a) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and which agrees to separately account for amounts transferred into such plan from this plan,

b) a traditional IRA,

c) a Roth IRA,

d) an annuity plan described in section 403(a) of the Code,

e) an annuity contract described in section 403(b) of the Code, or

f) a qualified plan described in section 401(a) of the Code.

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

(Note to reviewer: The Protecting Americans from Tax Hikes provisions of the Consolidated Appropriations Act of 2016, Pub. L. 114-113, ("the PATH Act") expanded portability of retirement assets by permitting taxpayers to roll over assets from traditional and SEP IRAs, as well as from employer-sponsored retirement plans, such as a § 401(k), § 403(b), or § 457(b) plan, into SIMPLE IRAs. For distributions made after December 18, 2015, a qualified plan can provide for a direct rollover to a SIMPLE IRA. However, the following restrictions apply: (1) SIMPLE IRAs cannot accept rollovers from Roth IRAs or designated Roth accounts, and (2) rollovers to or from the SIMPLE IRA cannot be made until after the two-year period beginning on the date the participant first participated in their employer's SIMPLE IRA plan.

For distributions made during plan years beginning after December 31, 2023, distributions from a terminated SIMPLE IRA may be rolled over to an eligible retirement plan that is not a SIMPLE IRA only if the amounts is rolled over to either: (1) a § 401(k) plan that is subject to the distribution limits of § 401(k)(2)(B), or (2) a § 403(b) arrangement that is subject to the distribution limits of § 403(b)(11). See Q&A G-4 of Notice 2024-2.)

2.3 Distributee: A distributee includes an employee or former employee. The employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A distributee also includes the employee's or former employee's nonspouse designated beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

2.4. Direct Rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. Written Explanation of Right to Direct Rollover. The plan administrator shall provide, within a reasonable time period before making an eligible rollover distribution, a written explanation to the participant that satisfies the requirements of section 402(f) of the Code.

Section 4. Automatic Rollovers:

In the event of a mandatory distribution greater than $1,000 in accordance with the

provisions of section _____, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with section(s) _____, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. For purposes of determining whether a mandatory distribution is greater than $1,000, the portion of the participant's distribution attributable to any rollover contribution is included.

(Note to reviewer: The first blank should be filled in with the plan section number which provides for mandatory distributions. See LRM #43. The second blank should be filled in with the plan section number which corresponds to employee elections. The automatic rollover requirements of § 401(a)(31)(B) apply to mandatory distributions made on or after March 28, 2005. However, note that the SECURE 2.0 Act of 2022 increased the immediately distributable dollar limit.)

Section 5. Rollovers from other plans

If provided by the employer in the adoption agreement, the plan will accept participant rollover contributions and/or direct rollovers of the types of contributions and from the types of plans specified in the adoption agreement.

Adoption Agreement Provisions:

Direct Rollovers: The plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)

( ) a qualified plan described in section 401(a) or 403(a) of the Code.

( ) an annuity contract described in section 403(b) of the Code.

( ) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(Choose one.)

( ) Including after-tax employee contributions from the plans or contracts checked above.

( ) Excluding after-tax employee contributions from the plans or contracts checked above.

(Choose one.)

( ) Including distributions from designated Roth accounts from the applicable plans or contracts checked above.

( ) Excluding distributions from designated Roth accounts from the applicable plans or contracts checked above.

In-Plan Roth Rollovers

( ) If checked, the plan will permit participants to make in-plan Roth rollovers.

Participant Rollover Contributions from Other Plans: The plan will accept a participant contribution of an eligible rollover distribution from: (Check each that applies or none.)

( ) a qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.

( ) an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions.

( ) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant Rollover Contributions from IRAs:

The Plan: (Choose one.)

( ) will

( ) will not

accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or (b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

(Note to reviewer: The SECURE 2.0 Act of 2022 added new IRC § 414(aa) to permit plan sponsors to amend a plan to account for benefit overpayments and to reduce future payments to the correct amount. The Act also added new IRC § 402(c)(12), which provides for continued eligible rollover treatment for (1) a benefit overpayment that had been rolled over if recoupment is not sought, or (2) the return of the distribution to the plan through a rollover distribution if recoupment is sought. Neither Code §§ 402(c)(12) nor 414(aa) are included on the 2023 Cumulative List, so sample plan language is not provided in this regard. However, sponsors may include provisions consistent with this statutory treatment.)

(Note to reviewer: After amendment by section 604(a) of the SECURE 2.0 Act of 2022, IRC §§ 402(c)(8)(B) and 402A(c)(3)(A) provide that if any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, that portion is permitted to be rolled over only to another

designated Roth account or to a Roth IRA. This includes a separate account that is established for designated Roth matching contributions or designated Roth nonelective contributions. See DC LRM #25 and CODA LRM IX.

Similarly, § 402A(c)(4)(B) requires an applicable retirement plan to include a qualified Roth contribution program in order for the plan to permit employees to make in-plan Roth rollovers. The sample plan language at Section 1.1 above is compliant for this purpose.)

51A. Recontributions

Statement of Requirement: **Code § 72(t)(2)(H)(v); CARES Act sec. 2202(a)(3); Notice 2020-50; Notice 2020-68**

Sample Plan Language:

Recontributions of Qualified Birth or Adoption Distributions

A Participant who received one or more Qualified Birth or Adoption Distributions under the Plan is entitled to recontribute the distributions (not to exceed the amount of the distributions) at any time during the 3-year period beginning on the day after the date on which such distribution was received, in the case of distributions made after December 29, 2022, or at any time after such distribution and before January 1, 2026, in the case of distributions made on or before December 22, 2022, if the Participant is eligible to make a rollover contribution to the Plan at the time of recontribution. A Participant who makes a recontribution to the Plan will be treated as having received the distributions in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

(Note to reviewer: A plan that permits a Qualified Birth or Adoption Distribution as provided in CODA LRM XVI (Distribution Limitations) must accept a repayment of the Qualified Birth or Adoption Distribution (QBAD) made under the Plan if the individual making the recontribution is eligible to make a rollover at the time of repayment. Section 311 of the SECURE 2.0 Act of 2022 amended § 72(t)(2)(H)(v)(I) to limit the recontribution period associated with QBADs to three years beginning on the day after the date on which such distribution was received.)

Recontributions of Coronavirus-Related Distributions

If elected by the employer in the Adoption Agreement, a Participant who is a qualified individual under section 2202(a)(4)(A)(ii) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, and Section 1B of Notice 2020-50, and who receives a coronavirus-related distribution that is eligible for tax-free rollover treatment may recontribute all or a portion of the coronavirus-related distribution at any time during

the 3-year period beginning the day after the date of a coronavirus-related distribution made under the Plan. The recontribution of a coronavirus-related distribution that is eligible for tax-free rollover treatment and made within the 3-year period described above will be treated as a rollover contribution to the Plan.

(Note to reviewer: A plan is not required to provide a coronavirus-related distribution or accept a recontribution of a coronavirus-related distribution that is eligible for tax-free rollover treatment. The Administrator of a Plan that accepts recontributions of coronavirus-related distributions must reasonably conclude that the recontribution is eligible for Direct Rollover treatment.)

Recontributions of Qualified Disaster-Recovery Distributions

A Participant who received one or more Qualified Disaster Recovery Distributions under the Plan is entitled to recontribute the distributions (not to exceed the amount of the distributions) at any time during the 3-year period beginning on the day after the date on which such distribution was received if the Participant is eligible to make a rollover contribution to the Plan at the time of recontribution. A Participant who makes a recontribution to the Plan will be treated as having received the distributions in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

(Note to reviewer: A plan that permits a Qualified Disaster Recovery Distribution as provided in CODA LRM XVI (Distribution Limitations) must accept a repayment of the Qualified Disaster Recovery Distribution made under the Plan if the individual making the recontribution is eligible to make a rollover at the time of repayment. Section 331 of the SECURE 2.0 Act of 2022 added §§ 72(t)(2)(M) and 72(t)(11) to provide tax-favored treatment, including exemption from the 10% additional tax and the right to repay the distribution, for qualified disaster recovery distributions up to $22,000.)

Recontribution of Distributions by Terminally Ill Participants

A Participant who received one or more distributions under the Plan on or after the date the Participant was certified by a physician as having a terminal illness that can reasonably be expected to result in death within 84 months of the certification may recontribute the distribution(s) (not to exceed the amount of the distributions) at any time during the 3-year period beginning on the day after the date on which such distribution was received if the Participant is eligible to make a rollover contribution to the Plan at the time of recontribution. A Participant who makes a recontribution to the Plan will be treated as having received the distributions in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

(Note to reviewer: A plan that makes distributions to a terminally ill participant, as that term is defined in Code § 72(t)(2)(L), must accept a repayment of the distribution if the individual making the recontribution is eligible to make a rollover at the time of repayment. See Q&A F-9 of Notice 2024-2. See also CODA LRM XVI.)

Recontributions of Emergency Personal Expense Distributions

A Participant who received one or more distributions on account of an Emergency Personal Expense under the Plan is entitled to recontribute the distribution(s) (not to exceed the amount of the distributions) at any time during the 3-year period beginning on the day after the date on which such distribution was received if the Participant is eligible to make a rollover contribution to the Plan at the time of recontribution. A Participant who makes a recontribution to the Plan will be treated as having received the distribution on account of an emergency personal expense in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

(Note to reviewer: A plan that provides for Emergency Personal Expense Distributions as provided in CODA LRM XVI (Distribution Limitations) must accept a repayment of the distribution if the individual making the recontribution is eligible to make a rollover at the time of repayment. Section 115 of the SECURE 2.0 Act of 2022 added §§ 72(t)(2)(I)(vi) to allow for repayment of Emergency Personal Expense Distributions as well as exemption from the 10% additional tax.)

Sample Adoption Agreement Language:

The employer [ ] will [ ] will not accept a recontribution of a coronavirus related distribution.

VESTING PROVISIONS

52. Designation of vesting computation period

Statement of Requirement: **Code § 411(a)(5)(A); DOL Reg. § 2530.200b-4**

(Note to reviewer: The following sample plan provisions may be used as alternatives, depending on whether vesting crediting is measured on the basis of the plan year or anniversaries of employment.)

Sample Plan Language:

Provision #1

For purposes of computing an employee's nonforfeitable right to the account balance derived from employer contributions, years of service and breaks in service will be measured by the plan year.

Provision #2

For purposes of determining years of service and breaks in service for purposes of computing an employee's nonforfeitable right to the account balance derived from employer contributions, the 12-consecutive month period will commence on the date the employee first performs an hour of service and each subsequent 12-consecutive month period will commence on the anniversary of such date.

53. Full vesting upon attainment of normal retirement age

Statement of Requirement: **Code § 411(a)**

Sample Plan Language:

Notwithstanding the vesting schedule elected by the employer in section _____ of the adoption agreement, an employee's right to his or her account balance must be nonforfeitable upon the attainment of normal retirement age.

(Note to reviewer: The blank should be filled in with the section of the plan's vesting schedule.)

54. Optional vesting schedules must be at least as favorable as the applicable minimum vesting schedules

Statement of Requirement: **Code §§ 411(a)(2), 416(b)(1)**

(Note to reviewer: If the plan provides vesting schedules other than those given in the Code (for example, § 411(a)(2) for regular schedules and § 416(b)(1) for top-heavy schedules; see LRM #64), the optional schedules must be at least as favorable as the statutory schedules. The vesting schedules under §§ 411(a)(2) and 416(b)(1) are the same.)

55. Crediting years of service - vesting

Statement of Requirement: **Code § 411(a)(4)**

Sample Adoption Agreement Language:

All of an employee's years of service with the employer are counted to determine the nonforfeitable percentage in the employee's account balance derived from employer contributions except:

( ) Years of service before age 18;

( ) Years of service during a period for which the employee made no mandatory contributions;

( ) Years of service before the employer maintained this plan or a predecessor plan;

( ) Years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

( ) Years of service before the effective date of ERISA if such service would have been disregarded under the break in service rules of the prior plan in effect from time to time before such date. For this purpose, break in service rules are rules which result in the loss of prior vesting or benefit accruals, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time.

( ) Years of service for Long-Term Part-Time employees prior to January 1, 2021.

(Note to Reviewer: Section 125(d) of the SECURE 2.0 Act of 2022 provides that a plan can disregard 12month periods beginning before January 1, 2021, for purposes of applying the vesting rules of IRC § 401(k)(15)(B)(iii). To the extent that a plan excludes years of service for long-term part-time employees, plan terms must apply an appropriate and compliant definition. See CODA LRM II.

Vesting rules under IRC § 401(k)(15)(B)(iii) state, for purposes of determining whether a long-term part-time employee has a nonforfeitable right to employer contributions (other than matching contributions described in paragraph (3)(D)(ii)) under the arrangement, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service. See also LRM #1 and CODA LRM II.)

56. Vesting break in service - 1-year holdout

Statement of Requirement: **Code § 411(a)(6)(B)**

Sample Plan Language:

In the case of a participant who has incurred a 1-year break in service, years of service before such break will not be taken into account until the participant has completed a year of service after such break in service.

57. Vesting break in service - rule of parity

Statement of Requirement: **Code § 411(a)(6)(D)**

Sample Plan Language:

In the case of a participant who has 5 or more consecutive 1-year breaks in service, the participant's pre-break service will count in vesting of the employer-derived accrued benefit only if either:

(i) such participant has any nonforfeitable interest in the accrued benefit attributable to employer contributions at the time of separation from service, or

(ii) upon returning to service the number of consecutive 1-year breaks in service is less than the number of years of service.

58. Vesting for pre-break and post-break account

Statement of Requirement: **Code § 411(a)(6)(C); Reg. § 1.411(b)-1(e)(2)**

Sample Plan Language:

In the case of a participant who has 5 consecutive 1-year breaks in service, all years of service after such breaks in service will be disregarded for the purpose of vesting the employer-derived account balance that accrued before such breaks, but both pre-break and post-break service will count for the purposes of vesting the employer-derived account balance that accrues after such breaks. Both accounts will share in the earnings and losses of the fund.

In the case of a participant who does not have 5 consecutive 1-year breaks in service, both the pre-break and post-break service will count in vesting both the pre-break and post-break employer-derived account balance.

(Note to reviewer: If the plan also uses the rule of parity, then in lieu of LRM #57 and the above provision, the plan should use the following alternate provisions.)

In the case of a participant who has 5 or more consecutive 1-year breaks in service all service after such breaks in service will be disregarded for the purpose of vesting the employer-derived account balance that accrued before such breaks in service. Such participant's pre-break service will count in vesting the post-break employer-derived

account balance only if either:

(i) such participant has any nonforfeitable interest in the account balance attributable to employer contributions at the time of separation from service; or

(ii) upon returning to service the number of consecutive 1-year breaks in service is less than the number of years of service. Separate accounts will be maintained for the participant's pre-break and post-break employer-derived account balance. Both accounts will share in the earnings and losses of the fund.

59. Amendment of vesting schedule

Statement of Requirement: **Code § 411(a)(10); Reg. § 1.411(a)-8(c)(1), § 1.411(a)-8T.**

Sample Plan Language:

If the plan's vesting schedule is amended, or the plan is amended in any way that directly or indirectly affects the computation of the participant's nonforfeitable percentage or if the plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, each participant with at least 3 years of service with the employer may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the plan without regard to such amendment or change. For participants who do not have at least 1 hour of service in any plan year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "5 years of service" for "3 years of service" where such language appears. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

(1) 60 days after the amendment is adopted,

(2) 60 days after the amendment becomes effective, or

(3) 60 days after the participant is issued written notice of the amendment by the employer or plan administrator.

60. Amendments affecting vested and/or accrued benefits

Statement of Requirement: Code §§ 411(a)(10)(A), 411(d)(6); Reg. § 1.411(d)-4, Q&A-2(e); Rev. Proc. 2023-37, sec. 9.02(2)Sample Plan Language:

No amendment to the plan shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit. This includes a plan amendment that decreases

a participant's accrued benefit, or otherwise places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in section 411(a)(3) through (11). Notwithstanding the preceding sentence, a participant's account balance may be reduced to the extent permitted under section 412(d)(2) of the Code or to the extent permitted under sections 1.411(d)-3 and 1.411(d)-4 of the regulations. For purposes of this paragraph, a plan amendment which has the effect of decreasing a participant's account balance, with respect to benefits attributable to service before the amendment, shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a plan is amended, in the case of an employee who is a participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such employee's employer-derived accrued benefit will not be less than the percentage computed under the plan without regard to such amendment.

No amendment to the plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a plan amendment that eliminates or restricts the ability of a participant to receive payment of his or her account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement.

(Note to reviewer: Plan amendments may also provide exceptions from the general prohibition against the elimination or restriction of optional forms of benefit for in-kind distributions and elective transfers as specified under Reg. § 1.411(d)-4 Q&A 2 and 3.)

(Note to reviewer: Plans may provide for an exception from the general prohibition against the elimination or restriction of optional forms for certain elective transfers. If a plan provides for the elimination or restriction of optional forms for elective transfers made on or after January 1, 2002, the plan must also provide that where the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution under § 401(a)(31), such transfer will be accomplished as a direct rollover under § 401(a)(31). See Reg. § 1.411(d)-4, Q&A-3(a)(4) & (c)(1)(ii). See also LRM #51.)

TOP-HEAVY PROVISIONS

61. Top-heavy definitions

Statement of Requirement: **Code § 416; Notice 2001-56; Notice 2001-57; Rev. Proc. 2023-37, sec. 9.02(5)**

Sample Plan Language:

If the plan is top-heavy in any plan year, the provisions of this section will supersede any conflicting provisions in the plan or adoption agreement.

(i) Key employee: Any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date is an officer of the employer having an annual compensation greater than $130,000 (as adjusted under section 416(i)(1) of the Code), a 5-percent owner of the employer, or a 1-percent owner of the employer having an annual compensation of more than $150,000. For purposes of this paragraph (i), annual compensation means compensation within the meaning of _____ of the adoption agreement.

(Note to reviewer: A plan that is designed to operate as if it were always top-heavy (a deemed top-heavy plan) need not contain the following paragraph or the provisions of LRM #61. A deemed top-heavy plan contains a single benefit structure that satisfies the requirements of §§ 416(b) and (c) for each plan year without regard to whether the plan is top-heavy.)

(Note to reviewer: The blank should be filled in with the section of the adoption agreement that corresponds to section B of the sample adoption agreement language at the end of LRM #31.)

The determination of who is a key employee will be made in accordance with § 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(ii) Top-heavy plan: This plan is top-heavy if any of the following conditions exist:

(a) If the top-heavy ratio for this plan exceeds 60 percent and this plan is not part of any required aggregation group or permissive aggregation group of plans.

(b) If this plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.

(c) If this plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.

(iii) Top-heavy ratio:

(a) If the employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the employer has not maintained any defined benefit plan which during the 5-year period ending on the determination date(s) has or has had accrued benefits, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all key employees as of the determination date(s) (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), both computed in accordance with section 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the determination date, but which is required to be taken into account on that date under section 416 of the Code and the regulations thereunder.

(b) If the employer maintains one or more defined contribution plans (including any Simplified Employee Pension Plan) and the employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the determination date(s) has or has had any accrued benefits, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all key employees, determined in accordance with (a) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all participants, determined in accordance with (a) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all participants as of the determination date(s), all determined in accordance with section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the 1-year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).

(c) For purposes of (a) and (b) above the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued

benefits of a participant (1) who is not a key employee but who was a key employee in a prior year, or (2) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a participant other than a key employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of section 411(b)(1)(C) of the Code.

(iv) Permissive aggregation group: The required aggregation group of plans plus any other plan or plans of the employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of sections 401(a)(4) and 410 of the Code.

(v) Required aggregation group: (1) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the employer which enables a plan described in (l) to meet the requirements of sections 401(a)(4) or 410 of the Code.

(vi) Determination date: For any plan year subsequent to the first plan year, the last day of the preceding plan year. For the first plan year of the plan, the last day of that year.

(vii) Valuation date: The date elected by the employer in section _____of the adoption agreement as of which account balances or accrued benefits are valued for purposes of calculating the top-heavy ratio.

62. Minimum allocation

Statement of Requirement: **Code § 416(c); Rev. Proc. 2023-37, sec. 9.03**

Sample Plan Language:

(1) Except as otherwise provided in (3),(4) and (5), below, the employer

contributions and forfeitures allocated on behalf of any participant who is not a key employee shall not be less than the lesser of three percent of such participant's compensation or in the case where the employer has no defined benefit plan which designates this plan to satisfy section 401 of the Code, the largest percentage of employer contributions and forfeitures, as a percentage of key employee's compensation, as limited by section 401(a)(17) of the Code, allocated on behalf of any key employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other plan provisions, the participant would not otherwise be entitled to receive an allocation or would have received a lesser allocation for the year because of (i) the participant's failure to complete 1,000 hours of service (or any equivalent provided in the plan), or (ii) the participant's failure to make mandatory employee contributions to the plan, or (iii) compensation less than a stated amount.

(2) For purposes of computing the minimum allocation, compensation shall mean compensation as defined in section _____ of the adoption agreement as limited by section 401(a)(17) of the Code.

(Note to reviewer: The blank shall be filled in with the section of the adoption agreement that corresponds to section B of the sample adoption agreement provisions at the end of LRM #31. Ensure that the definition of compensation includes any elective deferral (as defined in Code § 402(g)(3)) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of § 125 (including deemed § 125 compensation if elected in the adoption agreement), § 132(f)(4) or § 457.)

(3) The provision in (1) above shall not apply to any participant who was not employed by the employer on the last day of the plan year.

(4) The provision in (1) above shall not apply to any participant to the extent the participant is covered under any other plan or plans of the employer, the employer has provided in section _____ of the adoption agreement that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other plan or plans, and the participant receives the minimum allocation or benefit under such plan or plans.

(5) The provision in (1) above shall not apply to any employee who fails to meet the minimum age and service requirements of section 410(a)(1) of the Code for plan years beginning after December 31, 2023.

Sample Adoption Agreement Language on Minimum Benefits for Employees Also Covered Under Another Plan:

Complete if the top-heavy minimum benefit requirement is met in another plan.

Name of the other plan: _____

Minimum benefit that will be provided under such other plan _____

Employees who will receive the minimum benefit under such other plan

_____

_____

(Note to reviewer: Provision (4) above may cause the plan to fail to satisfy the uniformity requirement of Reg. § 1.401(a)(4)-2(b)(2)(ii) for plans using a design-based safe harbor, even though all other requirements of the safe harbor are met.)

Sample Adoption Agreement Language:

For purposes of minimum top-heavy allocations, contributions and forfeitures equal to _____ % of each non-key employee's compensation will be allocated to the employee's account when the plan is top-heavy.

63. Nonforfeitability of minimum allocation

Statement of Requirement: **Code § 416(c); Rev. Proc. 2023-37, sec. 9.02(2)**

Sample Plan Language:

The minimum allocation required (to the extent required to be nonforfeitable under section 416(b)) may not be forfeited under sections 411(a)(3)(B) or 411(a)(3)(D).

(Note to reviewer: In general, these citations refer to 3-year cliff and 6-year graded vesting schedules.)

64. Minimum vesting schedules

Statement of Requirement: **Code § 416(b); Rev. Proc. 2023-37, sec. 9.02**

Sample Plan Language:

For any plan year in which this plan is top-heavy, one of the minimum vesting schedules as elected by the employer in the adoption agreement will automatically apply to the plan. The minimum vesting schedule applies to all benefits within the meaning of section 411(a)(7) of the Code except those attributable to employee contributions, including benefits accrued before the effective date of section 416 and benefits accrued before the plan became top-heavy. Further, no decrease in a participant's nonforfeitable percentage may occur in the event the plan's status as top-heavy changes for any plan year. However, this section does not apply to the account balances of any employee who does not have an hour of service after the plan has initially become top-heavy and such

employee's account balance attributable to employer contributions and forfeitures will be determined without regard to this section.

Sample Adoption Agreement Language:

The nonforfeitable interest of each employee in his or her account balance attributable to employer contributions shall be determined on the basis of the following:

Option A

( ) 100% vesting after _____ (not to exceed 3) years of service.

Option B

( ) _____ % (not less than 20) vesting after 2 years of service.

( ) _____ % (not less than 40) vesting after 3 years of service.

( ) _____ % (not less than 60) vesting after 4 years of service.

( )_____ % (not less than 80) vesting after 5 years of service.

( ) 100% vesting after 6 years of service.

If the vesting schedule under the plans shifts in or out of the above schedule for any plan year because of the plan's top-heavy status, such shift is an amendment to the vesting schedule and the election in section _____ of the plan applies.

(Note to reviewer: The blank should be filled in with the section number which corresponds to LRM #59.)

(Note to reviewer: Long-term part-time employees within the meaning of SECURE Act section 112 are not subject to any of the top-heavy provisions described in DC LRMs #61 through 64. See CODA LRM II.)

DEATH BENEFITS

65. Incidental insurance provisions

Statement of Requirement: **Rev. Rul. 61-164, 1961-2 C.B. 99**

Sample Plan Language:

(a) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and

nonincreasing premiums. If such contracts are purchased, less than ½ of the aggregate employer contributions allocated to any participant will be used to pay the premiums attributable to them.

(b) Term and universal life - No more than ¼ of the aggregate employer contributions allocated to any participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(c) Combination - The sum of ½ of the ordinary life insurance premiums and all other life insurance premiums will not exceed ¼ of the aggregate employer contributions allocated to any participant.

(Note to reviewer: If the above limitations are met, the pre-retirement death benefit may consist of the proceeds of such insurance contracts plus the participant's account balance.)

66. Distribution of insurance contracts

Statement of Requirement: **Rev. Rul. 60-84, 1960-1 C.B. 159**

Sample Plan Language:

Subject to Article _____, Joint and Survivor Annuity Requirements, the contracts on a participant's life will be converted to cash or an annuity or distributed to the participant upon commencement of benefits.

67. Conflict with insurance contracts

Statement of Requirement: **Reg. §§ 1.72-16 & 1.401-1(a)(3)(iii)**

Sample Plan Language:

The trustee, if the plan is trusteed, or custodian, if the plan has a custodial account, shall apply for and will be the owner of any insurance contract purchased under the terms of this plan. The insurance contract(s) must provide that proceeds will be payable to the trustee (or custodian, if applicable), however the trustee (or custodian) shall be required to pay over all proceeds of the contract(s) to the participant's designated beneficiary in accordance with the distribution provisions of this plan. A participant's spouse will be the designated beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with section _____ , Joint and Survivor Annuity Requirements, if applicable. Under no circumstances shall the trust (or custodial account) retain any part of the proceeds. In the event of any conflict between the terms of this plan and the terms of any insurance contract purchased hereunder, the plan provisions shall control.

(Note to reviewer: The above language is designed to meet the joint and survivor annuity requirements of § 401(a)(11) of the Code. A plan may use different language provided that such language always guarantees that a participant's spouse will receive at least one-half of the vested account balance (including any proceeds from insurance contracts) as a survivor annuity, or in the case of a profit-sharing plan which is not subject to the survivor annuity requirements of § 401(a)(11), the entire vested account balance (including insurance proceeds).)

INVESTMENT PROVISIONS

68. Annual valuation of assets; allocation of trust earnings and losses

Statement of Requirement: **Rev. Rul. 80-155, 1980-1 C.B. 84**

Sample Plan Language:

The assets of the plan will be valued annually at fair market value as of the last day of the plan year. On such date, the earnings and losses of the plan will be allocated to each participant's account in the ratio that such account balance bears to all account balances.

69. Lifetime Income Investment Distributions

Statement of Requirement: **Code § 401(a)(38)**

A lifetime income investment held by the Plan may be distributed if the investment can no longer be held as an investment option under the Plan. Distributions must be made within the 90-day period ending on the date when the lifetime income investment is no longer authorized to be held as an investment option under the Plan, and [SELECT ONE OR BOTH OF THE FOLLOWING]:

1. _____The distribution may be made in a direct trustee-to-trustee transfer to an eligible retirement plan.

(Note to reviewer: See LRM 51, Direct Rollovers, for sample plan language in this regard.)

2. _____The distribution may be made in the form of an annuity contract purchased for a Participant and distributed by the Plan to a Participant.

For purposes of this section, a lifetime income investment is an investment option designed to provide a Participant with election rights (1) that are not uniformly available with respect to other investment options under the Plan, and (2) that are rights to a lifetime income feature available through a contract or other arrangement offered under

the Plan. A lifetime income feature is (1) a feature that guarantees a minimum level of income annually (or more frequently) for at least the remainder of the life of the Participant or the joint lives of the Participant and the Participant's designated beneficiary, or (2) an annuity payable on behalf of the Participant under which payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the Participant or the joint lives of the Participant and a Participant's designated beneficiary.

70. Diversification Requirements for Certain Defined Contribution Plans

Statement of Requirement: **Code § 401(a)(35); Reg. § 1.401(a)(35)-1; Notice 2011-19, 2011-11 I.R.B. 550**

(Note to reviewer: This Article is not required for the following plans: (1) a plan sponsored by a non-stock corporation; (2) a plan which does not provide for any investments in securities; (3) a plan which does provide for investments in securities, but only if these securities are held indirectly as part of a broader fund that is a regulated investment company described in Code § 851(a), a common or collective trust fund or pooled investment fund maintained by a bank or trust company supervised by a State or a Federal agency, a pooled investment fund of an insurance company that is qualified to do business in a State, or an investment fund managed by an investment manager within the meaning of § 3(38) of ERISA for a multiemployer plan, all as further described in Regulations § 1.401(a)(35)-1(f)(2)(iv)(B)(3)(ii); (4) a plan which is a one-participant retirement plan as defined in Code § 401(a)(35)(E)(iv); and (5) a plan that is an employee stock ownership plan (ESOP) that is a separate plan for purposes of Code § 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers and holds no contributions or earnings thereunder that are (or were ever) subject to Code § 401(k) or 401(m). A plan, however, is not considered to hold amounts ever subject to Code § 401(k) or 401(m) if the amounts attributable to a rollover (held in a separate account) were previously subject to Code § 401(k) or 401(m).

This Article is required in all other Pre-approved Plans which do not meet these criteria. See also ESOP LRM #5, Diversification Rights of Qualified Participants.)

Sample Plan Language:

Article _____. Diversification Requirements for Elective Deferrals, Employee Contributions, and Employer Nonelective Contributions Invested in Employer Securities

(___) The diversification requirements of Code section 401(a)(35) do not apply because the plan does not allow investment in employer securities.

(Note to reviewer: Select this option if this section does not apply because the plan does not allow investment in employer stock. If selected, the remainder of this DC LRM #70 does not need to be included in the plan.)

Section 1. The provisions of this Article apply only if the Plan holds any publicly traded employer security, except as described in Section 1.1. For purposes of this Article, publicly traded employer security is an employer security under section 407(d)(1) of ERISA which is readily tradable on an established securities market. A security is readily tradable on an established securities market if the security is traded on a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934, or if the security is traded on a foreign national securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority and where the security is deemed by the Securities and Exchange Commission as having a ready market under SEC Rule 15c3-1.

Section 1.1. If the Employer, or any member of a controlled group of corporations (as described in Treasury regulations section 1.401(a)(35)-1(f)(2)(iv)(A)) which includes the Employer, has issued a class of stock which is a publicly traded employer security, and the Plan holds employer securities which are not publicly traded employer securities, then the Plan shall be treated as holding publicly traded employer securities.

(Note to reviewer: See Reg. § 1.401(a)(35)-1(f)(2)(iv)(B) for exceptions for certain plans.)

Section 1.2. With respect to a participant (including for purposes of this section an alternate payee who has an account under the Plan or a deceased participant's beneficiary), if any portion of the participant's account under the Plan attributable to elective deferrals (as described in section 402(g)(3)(A) of the Code), employee contributions, or rollover contributions is invested in publicly traded employer securities, then the participant must be offered the opportunity to elect to divest those employer securities and reinvest an equivalent amount in other investment options as described in Section 1.4.

Section 1.3. With respect to a participant (including for purposes of this section an alternate payee who has an account under the plan with respect to such participant or a deceased participant's beneficiary) who has completed at least three years of vesting service, if any portion of the participant's account attributable to employer nonelective contributions is invested in publicly traded employer securities, then the participant must be offered the opportunity to elect to divest those employer securities and reinvest an equivalent amount in other investment options as described in Section 1.4. A year of vesting service has the same meaning as described in section 411(a)(5) of the Code.

(Note to reviewer: For a plan that uses the elapsed time method of crediting service

for vesting purposes (or a plan that provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a participant completes 3 years of vesting service on the day immediately preceding the third anniversary of the participant's date of hire pursuant to Reg. § 1.401(a)(35)-1(c)(3).)

(Note to reviewer: Plans may include the following transitional rule for Section 1.3 when an account consists of publicly traded employer securities acquired in a plan year beginning before January 1, 2007, pursuant to Reg. § 1.401(a)(35)-1(g)(3)(ii).)

Section 1.3(a). Transitional Rule: If the plan holds publicly traded employer securities acquired in a plan year beginning before January 1, 2007, Section 1.3 applies only to the applicable percentage of the number of shares of those securities. The applicable percentage is 33% for the first plan year to which Code section 401(a)(35) applies, 66% for the second plan year, and 100% for all subsequent plan years. If the Plan holds more than one class of securities, this transitional rule applies separately with respect to each class. This transitional rule does not apply to a participant who has attained age 55 and who has completed at least 3 years of vesting service before the first day of the first plan year beginning after December 31, 2005.

Section 1.4. At least three investment options (other than employer securities) must be offered to participants described in Sections 1.2 and 1.3. Each investment option must be diversified and have materially different risk and return characteristics. Periodic reasonable divestment and reinvestment opportunities must be provided at least quarterly. Except as provided in sections 1.401(a)(35)-1(e)(2) and (3) of the Treasury Regulations, restrictions (either direct or indirect) or conditions will not be imposed on the investment of publicly traded employer securities if such restrictions or conditions are not imposed on the investment of other plan assets.

(Note to reviewer: Sample ESOP plan provisions are contained in the ESOP LRM. See the Listing of Required Modifications Web page.)

AMENDMENT AND TERMINATION

71. Provider's power to amend

Statement of Requirement: **Rev. Proc. 2023-37, secs. 9.02(1) and 13.01**

Sample Plan Language:

The Provider, as defined in section 4.01(15) of Rev. Proc. 2023-37, may amend any part of the plan. However, for purposes of reliance on an Opinion Letter, the Provider will no longer have the authority to amend the plan on behalf of the Adopting Employer as of the date (1) the Adopting Employer makes any amendment to the plan other than

amendments described in section 13.02 and 13.05 of Rev. Proc. 2023-37, (2) the Adopting Employer amends the plan to incorporate a type of plan described in section 10.02 of Rev. Proc. 2023-37 that is not permitted under the Pre-approved Plan program, (3) the Internal Revenue Service notifies the Adopting Employer, in accordance with section 13.05(4) of Rev. Proc. 2023-37, that the plan is an individually designed plan due to the nature and extent of employer amendments to the plan, (4) the Adopting Employer chooses to discontinue participation in the plan after the plan's amendment by the Provider and the Adopting Employer does not substitute another Pre-approved Plan, (5) the Adopting Employer makes any amendment to the plan that removes a required provision described in section 9 of Rev. Proc. 2023-37, (6) the Adopting Employer fails to timely adopt a newly approved version of the plan within the designated Employer Adoption Window for a cycle as described in section 11.02 of Rev. Proc. 2023-37, or (7) the Adopting Employer fails to timely adopt an Interim Amendment by the end of the second year after the plan amendment deadline described in section 7.01 of Rev. Proc. 2023-37.

For purposes of Provider amendments, the mass submitter shall be recognized as the agent of the Provider. If the Provider does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan.

72. Amendment by adopting employer

Statement of Requirement: **Rev. Proc. 2023-37, secs. 12.01, 13.02 and 13.02**

Sample Plan Language:

The Adopting Employer may (1) change the choice of options in the adoption agreement; (2) specify or change the effective date of a provision as permitted under the plan; (3) add overriding language in the adoption agreement when such language is necessary to satisfy section 415 or section 416 of the Code because of the required aggregation of multiple plans; (4) amend administrative provisions of the plan such as provisions relating to investments, plan claims procedures, and employer contact information provided the amended provisions are not in conflict with any other provision of the plan and do not cause the plan to fail to qualify under section 401; (5) adopt sample or model plan amendments published by the Internal Revenue Service which provide that their adoption will not result in the employer losing reliance on the opinion letter; (6) amend to adjust for limitations provided under section 415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost of living increases, or to add automatic cost-of-living adjustments to the plan; (7) make interim amendments or discretionary amendments that are related to a change in qualification requirements; (8) amend the plan to reflect a change of a Provider's name; and (8) amend the plan as provided in a closing agreement under the Audit Closing Agreement Program or compliance statement under the Voluntary Correction Program. An Adopting Employer that amends the plan for any other reason will no longer have

reliance on the Opinion Letter.

(Note to reviewer: The above provision, limiting the ability of the Adopting Employer to amend the plan, would not preclude the employer, in cases where the employer is switching from an individually designed plan or from one Pre-approved Plan to another, from attaching to the plan a list of the "section 411(d)(6) protected benefits" that must be preserved. (See LRM #60 and Rev. Proc. 2023-37, section 9.02(2)). Such a list would not be considered an amendment to the plan.)

73. Vesting - plan termination

Statement of Requirement: **Code § 411(d)(3)(A)**

Sample Plan Language: In the event of the termination or partial termination of the plan the account balance of each affected participant will be nonforfeitable.

(Note to reviewer: See Rev. Rul. 2007-43, 2007-28 C.B. 45, regarding partial terminations. Special rules apply in 2020 and 2021. Section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, provides that a plan is not treated as having a partial termination (within the meaning of § 411(d)(3)) during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020. This relief is operational and does not require enabling terms. Therefore, no sample plan language is provided in this regard.)

74. Vesting - complete discontinuance of contributions

Statement of Requirement: **Code § 411(d)(3)(B)**

Sample Plan Language:

In the event of a complete discontinuance of contributions under the plan, the account balance of each affected participant will be nonforfeitable.

(Note to reviewer: The above provision is only required in and applicable to profit-sharing plans.)

75. Plan merger - maintenance of benefit

Statement of Requirement: **Code §§ 401(a)(12), 414(l); Reg. § 1.414(l)-1**

Sample Plan Language:

In the event of a merger or consolidation with, or transfer of assets or liabilities to, any other plan, each participant will receive a benefit immediately after such event (if the plan then terminated) which is at least equal to the benefit the participant was entitled to immediately before such event (if the plan had terminated).

MISCELLANEOUS PLAN PROVISIONS

76. Inalienability of benefits

Statement of Requirement: **Code §§ 401(a)(13) and 414(p)**

Sample Plan Language:

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in section 414(p) of the Code, or any domestic relations order entered before January 1, 1985.

(Note to reviewer: The sample provision requires the plan administrator to comply with a domestic relations order entered before January 1, 1985, regardless of whether payment of benefits pursuant to the order has commenced as of such date. The plan may provide instead that a domestic relations order entered before January 1, 1985, will be treated as a qualified domestic relations order if payment of benefits pursuant to the order has commenced as of such date, and may be treated as a qualified domestic relations order if payment of benefits has not commenced as of such date, even though the order does not satisfy the requirements of § 414(p).)

(Note to reviewer: Any requirement set forth in the Internal Revenue Code that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. See Notice 2014-19, Rev. Rul. 2013-17, and the decision in *U.S. v Windsor*, 570 U.S. 12 (2013). Accordingly, under Reg. § 301.7701-18(b)(1), a marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of the married couple's place of domicile. For example, a qualified domestic relations order adjudicating marital property rights must be provided to a same-sex spouse. See the Notes to reviewer at LRM #s 43 (Minimum Distribution Requirements) and 51 (Direct Rollovers), and CODA LRM XVII (Hardship Distributions) for additional provisions affected by the *Windsor* decision.)

(Note to reviewer: Section 339 of the SECURE 2.0 Act of 2022 amends the definition of "domestic relations order" under § 414(p)(1)(B)(ii) and the parallel provision under ERISA § 206(d)(3)(B)(ii)(II) to include a domestic relations order issued pursuant to a Tribal domestic relations law as well as a State domestic relations law. After amendment, § 414(p)(1)(B) provides that, for this purpose, a "Tribal" domestic relations law means a law issued by or under the laws of an Indian tribal government, a subdivision of such an Indian Tribal government, or an agency or instrumentality of either. The model language above is consistent with these changes. Conflicting language would require a conforming change.)

77. Loans to participants

Statement of Requirement: **Code §§ 72(p), 401(a)(13), 4975(d)(1), 4975(f)(6), 417(f)(5); Reg. §§ 1.401(a)-20, Q&A 24, 1.72(p)-1; DOL Reg. § 2550.408(b)-1; Rev. Proc. 96-49, 1996-2 C.B. 369; Notice 2020-50, 2020-28 I.R.B. 35**

(Note to reviewer: A plan may provide for loans to participants or beneficiaries if it complies with the requirements of § 4975(d)(1) of the Code.)

Sample Plan Language:

(1) Loans shall be made available to all participants and beneficiaries on a reasonably equivalent basis.

(2) Loans shall not be made available to highly compensated employees (as defined in section _____ of the plan) in an amount greater than the amount made available to other employees.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #11.)

(3) Loans must be adequately secured and bear a reasonable interest rate.

(4) No participant loan shall exceed the present value of the participant's vested accrued benefit.

(5) A participant must obtain the consent of his or her spouse, if any, to use of the account balance as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 180-day period (90-day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if

the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

(6) In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the plan.

(7) Loan repayments will be suspended under this plan as permitted under §414(u)(4) of the Internal Revenue Code.

If a valid spousal consent has been obtained in accordance with (5), then, notwithstanding any other provision of this plan, the portion of the participant's vested account balance used as a security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

(Note to reviewer: No spousal consent is required for the use of the account balance as security for a plan loan to the participant under a profit-sharing plan not subject to the joint and survivor and preretirement survivor annuity rules under §§ 401(a)(11) and 417.)

(Note to reviewer: Code § 72(p) provides that certain plan loans are treated as distributions. Compliance with § 72(p) is not required for plan qualification. Therefore, any plan provision dealing with § 72(p) will not be considered with respect to the issuance of a favorable opinion letter. However, some qualification requirements could be affected when § 72(p) is not satisfied. The following language is provided to assist Providers in drafting provisions to comply with § 72(p).)

No loan to any participant or beneficiary can be made to the extent that such loan when added to the outstanding balance of all other loans to the participant or beneficiary would exceed the lesser of (a) $50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the plan on the date the loan is made, or (b) one-half the present value of the nonforfeitable accrued benefit of the participant or, if greater, the total accrued benefit up to $10,000. For the purpose of the above limitation, all loans from all plans of the employer and other members of a group of employers described in sections 414(b), 414(c), and 414(m) of the Code are aggregated. Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant. An assignment or pledge of any

portion of the participant's interest in the plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the plan, will be treated as a loan under this paragraph.

(Note to reviewer: Section 108 of the SECURE Act modifies § 72(p) by prohibiting loans through credit cards and other similar arrangements, effective for loans made after December 20, 2019. Plan language enabling loans through credit cards or another similar arrangement should be removed.)

(Note to reviewer: Section 2202 of the CARES Act permits an additional year for repayment of loans from eligible retirement plans and relaxes limits on loans. Under these rules, if a loan is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the plan for up to one year. Any payments after the suspension period will be adjusted to reflect the delay and any interest accruing during the delay. See section 5.B of Notice 2020-50 for guidance on implementing payment suspensions under this provision.

The CARES Act also permits employers to increase the maximum loan amount for plan loans made to eligible individuals from March 27, 2020, to September 22, 2020. The limit may be increased up to the lesser of: (1) $100,000 (minus outstanding plan loans of the individual), or (2) the individual's vested benefit under the plan. See section 5.A of Notice 2020-50.

The CARES Act loan rules are optional. An employer may choose whether, and to what extent, to amend its plan to provide for expanded loan administration. To the extent an employer chooses to provide coronavirus-related loans, the following sample plan language may be used.)

(Note to reviewer: See the CODA LRM for additional coronavirus-related relief provisions.)

Coronavirus-Related Loans

If elected by the Employer in the Adoption Agreement, a loan to a Participant or Beneficiary may be treated as a coronavirus-related loan. A coronavirus-related loan is a loan made from the Plan on or after March 27, 2020, and before September 23, 2020, to a qualified individual, as defined in section 2202(a)(4)(A)(ii) of the Coronavirus Aid, Relief, and Economic Security Act, Pub L 116-136 (CARES Act) and Section 1B of Notice 2020-50, which does not exceed the lesser of (a) $100,000 (reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the plan on the date the loan is made), or (2) the individual’s vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers.

If a loan is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the Plan for up to one year. Any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the 5-year period and the term of the loan under Code sections 72(p)(2)(B) and (C).

(Note to reviewer: The Plan Administrator may rely on an individual's certification that they satisfy the conditions to be a qualified individual unless the Administrator has actual knowledge to the contrary. See section 5.C of Notice 2020-50.)

(Note to reviewer: Prior legislation lifted restrictions on plan loans to individuals whose principal place of abode was in a federally declared disaster area subject to legislative relief, and who sustained an economic loss because of the disaster. Legislation addressing specific disaster areas generally allowed new loans with a higher limit of $100,000 (or the full accrued benefit of the employee, if less), plus a one-year suspension of repayment due dates for loans to affected individuals that are outstanding on or within six months after the disaster, in addition to other relief. These provisions are optional and required enabling plan amendments limited to the disasters and date ranges specified in the legislation.

Recent legislation enacting temporary disaster-related loan relief includes:

- **Section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. 115-63, relating to 2017 Hurricanes Harvey, Irma and Maria, providing for new loans and suspension of payments for outstanding loans with due dates from September 29, 2017, to December 31, 2018 (dates vary by specific hurricane).**

- **Section 20102 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, relating to California wildfires, providing for new loans from February 9, 2018, to December 31, 2018, and suspension of payments for outstanding loans with due dates from October 8, 2017, to December 31, 2018.**

- **Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, relating to federal disaster areas declared from January 1, 2018, to February 18, 2020, providing for new loans made from December 20, 2019, to June 16, 2020, and suspension of payments for outstanding loans with payments due up to 180 days from the end of the declared incident period.**

- **Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, relating to federal disaster areas declared from January 1, 2020,**

to February 25, 2021; providing for new loans made from December 27, 2020, to June 24, 2021 (during 180-day period beginning on the date of enactment), and suspension of payments for outstanding loans with payments due up to 180 days from end of the declared incident period.

Section 331 of the SECURE 2.0 Act added new Code § 72(p)(2)(6) to provide permanent disaster-related loan relief to individuals affected by qualified disasters. This provision is effective for loans related to federally declared disasters with an incident period beginning on or after January 26, 2021. See IRC §§ 72(p)(2)(6) and 72(t)(11)(E)-(F).)

Federally Declared Disasters

1. Definitions relating to Qualified Federally Declared Disasters under Code section 72(p)(6). These definitions apply to sections 2. and 3., below.
    a. A qualified disaster is any disaster with respect to which a major disaster has been declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act after December 27, 2020.
    b. The qualified disaster area with respect to any qualified disaster is the area with respect to which the major disaster was declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. However, any area which is included in a qualified disaster area solely by reason of section 301 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 is excluded.
    c. The incident period of a qualified disaster is the period specified by the Federal Emergency Management Agency as the period during which the disaster occurred.
    d. The applicable date for a qualified disaster is the latest of i) December 27, 2020, ii) the first day of the incident period with respect to the qualified disaster, or iii) the date of the disaster declaration with respect to the qualified disaster.
    e. The applicable period with respect to a qualified disaster is the period beginning on the applicable date with respect to the disaster, and ending on the date that is 180 days after the applicable date.
    f. A qualified individual with respect to a particular qualified disaster is any individual whose principal place of abode at any time during the incident period of the qualified disaster is located in the qualified disaster area with respect to such qualified disaster, and who has sustained an economic loss by reason of such qualified disaster.
2. Qualified disaster-related loans. For qualified disasters with an incident period for beginning on or after January 26, 2021, increased loan limits will apply to any Plan loan to a qualified individual made during the applicable period with respect to the

disaster. The maximum disaster-related loan under this provision is the lesser of (a) $100,000 (minus the highest outstanding balance of loans from the Plan during the prior 1-year period), or (b) the individual's full vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers.

3. Qualified disaster-related loan repayment suspension. For qualified disasters with an incident period beginning on or after January 26, 2021, if a loan to a qualified individual is outstanding on or after the first day of the incident period of the disaster, the due date for any repayment with respect to such loan that is due during the period beginning on the first day of the incident period, and ending on the date which is 180 days after the last day of the incident period, will be delayed under the Plan for one year. The period of delay will be disregarded in determining the term of the loan and the level of amortization under Code sections 72(p)(2)(B) and (C). Any payments after the suspension period will be adjusted to reflect the delay and interest accruing during the delay.

4. Temporary plan provisions for other federally-declared disasters. If elected by the Employer in the Adoption Agreement, a new loan to a Participant may be made, and payments on outstanding Plan loans may be suspended, in the event of a federally declared disaster that was declared on or before December 27, 2020, where resulting legislation or guidance authorizes such loans and payment suspensions. The Plan allows the following disaster-related modifications to the loan provisions in section ___ .

   a. 2017 Hurricane Relief under Section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. 115-63. An individual whose principal place of abode on August 23, 2017 (Hurricane Harvey), September 4, 2017 (Hurricane Irma), or September 16, 2017 (Hurricane Maria) (the beginning date of the hurricane) was located in that hurricane's disaster area and who sustained an economic loss by reason of that hurricane may obtain a disaster-related loan during the period beginning on September 29, 2017, and ending on December 31, 2018. The maximum permitted amount of this disaster-related loan is the lesser of (a) $100,000 (minus the highest outstanding balance of loans from the Plan during the prior 1-year period), or (2) the individual's vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers. The due date for scheduled repayments on outstanding plan loans to qualified individuals with payment due dates during the period from the beginning date of the hurricane to December 31, 2018, is delayed for one year. Any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the 5-year period and the term of the loan under Code sections 72(p)(2)(B) and (C).

   b. California wildfire relief under Section 20102 of the Bipartisan Budget Act of

2018, Pub. L. 115-123. An individual whose principal place of abode during any portion of the period from October 8, 2017, to December 31, 2018, was located in the California wildfire disaster area and who sustained an economic loss by reason of the California wildfires may obtain a disaster-related loan during the period beginning on February 9, 2018, and ending on December 31, 2018. The maximum permitted amount of this disaster-related loan is the lesser of (a) $100,000 (minus the highest outstanding balance of loans from the Plan during the prior 1-year period), or (2) the individual's vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers. The due date for scheduled repayments on outstanding plan loans to qualified individuals with payment due dates during the period beginning on October 8, 2017, and ending on December 31, 2018, is delayed for one year. Any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the 5-year period and the term of the loan under Code sections 72(p)(2)(B) and (C).

c. Federally-declared disasters under Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94. An individual whose principal place of abode, during any portion of the incident period of a federally declared disaster declared during the period from January 1, 2018, to February 18, 2020, was located in the disaster area and who sustained an economic loss by reason of the disaster may obtain a disaster-related loan during the period beginning on December 20, 2019, and ending on June 16, 2020. The maximum permitted amount of this disaster-related loan is the lesser of (a) $100,000 (minus the highest outstanding balance of loans from the Plan during the prior 1-year period), or (2) the individual's vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers. The due date for scheduled repayments on outstanding plan loans to qualified individuals with payment due dates during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, is delayed for one year (or, if later, until June 17, 2020). Any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the 5-year period and the term of the loan under Code sections 72(p)(2)(B) and (C).

d. Federally-declared disasters under Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260. An individual whose principal place of abode, during any portion of the incident period of a federally declared disaster

declared during the period from January 1, 2020, to February 25, 2021 (not including the coronavirus-related disaster), was located in the disaster area and who sustained an economic loss by reason of the disaster may obtain a disaster-related loan during the period beginning on December 27, 2020, and ending on June 24, 2021. The maximum permitted amount of this disaster-related loan is the lesser of (a) $100,000 (minus the highest outstanding balance of loans from the Plan during the prior 1-year period), or (2) the individual's vested benefit under the Plan and other retirement plans maintained by the Employer and Related Employers. The due date for scheduled repayments on outstanding plan loans to qualified individuals with payment due dates during the period beginning on the first day of the incident period of such qualified disaster and ending on the date which is 180 days after the last day of such incident period, is delayed for one year (or, if later, until June 25, 2021). Any payments after the suspension period must be adjusted to reflect the delay and any interest accruing during the delay, and the period of delay must be disregarded in determining the 5-year period and the term of the loan under Code sections 72(p)(2)(B) and (C).

Sample Adoption Agreement Language:

Coronavirus-Related Loans

The Plan permits coronavirus-related loans from a Participant's vested account balance to the extent permitted under the Investment Arrangement:

___ Yes

___ No

Federally Declared Disaster Loans

The Plan permits qualified disaster-related loans from a Participant's account in the event of a Federally declared disaster occurring on or after January 26, 2021:

___ Yes

___ No

The Plan permits disaster-related loans from a Participant's account after the federally-declared disasters marked below:

___ Hurricanes Harvey, Irma and Maria (under Section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. 115-63)

____ California wildfires (under Section 20102 of the Bipartisan Budget Act of 2018, Pub. L. 115-123)

____ Federal disaster areas declared from January 1, 2018, to February 18, 2020 (under Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94)

____ Federal disaster areas declared from January 1, 2020, to February 25, 2021 (under Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260)

The Plan permits disaster-related plan loan payment suspensions after the federally-declared disasters marked below:

___ Hurricanes Harvey, Irma and Maria (under Section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. 115-63)

____ California wildfires (under Section 20102 of the Bipartisan Budget Act of 2018, Pub. L. 115-123)

____ Federal disaster areas declared from January 1, 2018, to February 18, 2020 (under Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94)

____ Federal disaster areas declared from January 1, 2020, to February 25, 2021 (under Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260)

78. Exclusive benefit

Statement of Requirement: **Code § 401(a)(2); Rev. Rul. 91-4, 1991-1 C.B. 57**

Sample Plan Language:

The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries.

(Note to reviewer: All nontrusteed plans (plans designated as funded only with insurance contracts) must use LRM #79 in lieu of LRM #78. All other plans, including trusts or custodial accounts, must include the above language.)

(Note to reviewer: Rev. Rul. 91-4 provides that plan terms may authorize return of employer contributions made because of a mistake of fact. The sample plan language below may be used without violating the exclusive benefit rule consistent with this ruling.)

Any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution.

In the event the deduction of a contribution made by the employer is disallowed under Section 404 of the Code, such contribution (to the extent disallowed) must be returned to the employer within one year of the disallowance of the deduction.

In the event that the Commissioner of Internal Revenue determines that the plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the employer must be returned to the employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which the plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

79. Treatment of insurance dividends and other credits, fully insured plans

Statement of Requirement: **Reg. § 1.404(a)-8; Rev. Rul. 60-33, 1960-1 C.B. 152**

(Note to reviewer: All nontrusteed plans (plans designated as funded only with insurance contracts) must include this provision in lieu of LRM #78.)

Sample Plan Language:

No contract will be purchased under the plan unless such contract or a separate definite written agreement between the employer and the insurer provides that: (1) no value under contracts providing benefits under the plan or credits determined by the insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the employer or diverted to or used for other than the exclusive benefit of the participants or their beneficiaries. However, any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution. If this plan is funded by individual contracts that provide a participant's benefit under the plan, such individual contracts shall constitute the participant's account balance. If this plan is funded by group contracts, under the group annuity or group insurance contract, premiums or other consideration received by the insurance company must be allocated to participants' accounts under the plan.

80. Failure of qualification

Statement of Requirement: **Rev. Proc. 2023-37, sections 6.04 and 12.03(1)**

Sample Plan Language:

If the employer's plan fails to attain or retain qualification, such plan will no longer participate in this Pre-approved Plan and will be considered to be an individually designed plan.

(Note to Reviewer: An Adopting Employer may rely on an Opinion Letter for a plan that amends the qualified plan of the Employer only if the form of the plan being amended satisfies the Code § 401(a) qualification requirements. Accordingly, prior to being amended, the Adopting Employer must have corrected any disqualifying provisions in its plan. See Rev. Proc. 2023-37, section 12.03(1).

After adopting a Pre-Approved Plan, the Provider (or Adopting Employer, if applicable) must timely adopt any required Interim Amendments. If a failure to timely adopt an Interim Amendment is not corrected within two years after the adoption deadline, the Adopting Employer's plan will be treated as an individually designed plan at the end of that two-year period. See Rev. Proc. 2023-37, section 6.04.)

(Note to reviewer: Effective December 29, 2022, Section 305 of the SECURE 2.0 Act expands and permits qualified retirement plans, 403(b) plans, SEPs, and SIMPLE IRA plans to self-correct under EPCRS any "eligible inadvertent failures" to comply with applicable requirements of the Internal Revenue Code, except to the extent that (1) such failure was identified by the IRS prior to any action which demonstrates a specific commitment to implement a self-correction with respect to such failure, or (2) the self-correction is not completed within a reasonable period after such failure is identified. The correction period is indefinite and has no last day other than with respect to a failure identified by the IRS prior to any action which demonstrates a specific commitment to implement a self-correction with respect to such failure or with respect to a self-correction that is not completed within a reasonable period after such failure is identified. See Notice 2023-43, 2023-24 I.R.B. 919, for additional guidance, pending any update to Rev. Proc. 2021-30, 2021-31 I.R.B. 172.)

81. Conflicting Trust Provisions

Statement of Requirement: **Rev. Proc. 2023-37, sec. 9.02(7)**

(Note to reviewer: Each Pre-approved Plan must contain a statement that the provisions of the plan override any conflicting provision contained in Trust or Custodial Account Documents used with the plan. Accordingly, if a plan is operated in a manner that is inconsistent with a provision of the single plan document or basic plan document, the plan will incur an operational failure even if the plan is operated in a manner consistent with a provision of a Trust or Custodial Account Document that conflicts with the provision of the single plan document or basic

plan document.)

Sample Plan Language:

In the event of any conflict between the terms of this plan and any conflicting provision contained in any associated trust, custodial account document or any document that is incorporated by reference, the terms of this plan will govern.

82. RESERVED

83. Crediting service with predecessor employer

Statement of Requirement: **Code § 414(a); Rev. Proc. 2023-37, sec. 9.03(6)**

Sample Plan Language:

If the employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the employer.

84. RESERVED

85. Additional Adoption Agreement requirements

Statement of Requirement: **Rev. Proc. 2023-37, secs. 9.02(8) and 9.02(9)**

(Note to reviewer: Although this LRM describes additional requirements applicable to Adoption Agreement Plans, these requirements generally also apply to Single Document Plans. An Adoption Agreement Plan consists of a basic plan document and an adoption agreement. The basic plan document contains all of the non-elective provisions applicable to all Adopting Employers, and the adoption agreement contains the options that may be selected by each Adopting Employer. In that case, many of these requirements would appear in and be satisfied by the Adoption Agreement. In contrast, a Single Document Plan consists of a single plan document offered by a Provider without an adoption agreement. A Single Document Plan may contain alternate paragraphs and options – including blanks to be completed by the Adopting Employer in accordance with specified parameters - that may be selected by an Adopting Employer. A Single Document Plan must comply with these requirements as well.)

(Note to reviewer: Plans cannot include blanks or fill-in provisions for the Adopting Employer to complete unless the provisions have parameters which preclude the Adopting Employer from completing the provisions in a manner that could violate the qualification requirements. See Rev. Proc. 2023-37, sec. 10.02(d).)

(Note to reviewer: Each adoption agreement must contain language which complies with the following requirements:

(1) The plan must include a procedure for amendments by the Provider and that the Provider will no longer have the authority to amend the plan as of the date the plan is treated as an individually designed plan. See LRM #71.

(2) The adoption agreement must state that it is to be used with only one basic plan document and must identify that document.

(3) The adoption agreement must include the name, address and telephone number of the Provider or the Provider's authorized representative. The adoption agreement may also provide additional contact information (such as an email address).

(4) The adoption agreement must contain a statement describing the limitations on employer reliance on an Opinion Letter and that the failure to properly fill out the adoption agreement may result in disqualification of the plan.

(5) The adoption agreement must contain a statement that the Provider will inform the adopting employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

(6) The adoption agreement must contain a dated employer signature line.

(7) The employer must complete a new adoption agreement upon first adoption of the plan. Additionally, upon any modification to a prior election, making of new elections, or restatement of the plan, a new adoption agreement or signature page and plan document must be completed.

(8) The plan may not be signed prior to the issuance of an Opinion Letter for the Plan.)

(Note to reviewer: The above signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment, or modification thereof, by the employer.)

(Note to reviewer: For plan years beginning on or after January 1, 2020, Section 201 of The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. 116–94, provides that a retirement plan may be treated as if it is effective for a taxable year so long as the plan is adopted before the due date of the employer's tax return (including extensions) for that year.)

86. USERRA - Military Service Credit

Statement of Requirement: **Code §§ 401(a)(37) and 414(u); Rev. Proc. 96-49; Notice 2010-15; Rev. Proc. 2023-37, sec. 9.02(12)**

Sample Plan Language:

Notwithstanding any provision of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code. In addition, the survivors of any participant who dies on or after January 1, 2007, while performing qualified military service, are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the plan had the participant resumed employment on the day preceding the participant's death and then terminated employment on account of death.

(Note to reviewer: As added by the HEART Act, for deaths and disabilities occurring on or after January 1, 2007, § 414(u)(9) provides that an employer may, for benefit accrual purposes, treat an individual who dies or becomes disabled while performing qualified military service as if that individual had resumed employment in accordance with USERRA reemployment rights on the day preceding the death or disability and then terminated employment on the actual date of death or disability. Any benefit accruals or contributions under § 414(u)(9) must be provided to all such individuals performing qualified military service with respect to the employer (and other employers aggregated with the employer under section § 414(b), (c), (m) and (o)) on terms that are reasonably equivalent. The sample language does not provide for contributions allowed under § 414(u)(9) but may be modified to do so or to allow the employer to elect in the adoption agreement that contributions will be provided under the plan with respect to all such deceased and/or disabled individuals.

Where an individual dies on or after January 1, 2007, while performing qualified military service, vesting credit for the period of the deceased individual's qualified military service must be provided in the case where the individual dies while performing such service. Vesting credit may be provided, but is not required, where the individual is disabled while performing qualified military service. See Part II of Notice 2010-15, Q&A 3, and LRM #55, Crediting years of service-vesting. The sample language may also be modified to provide vesting service credit for the period of a disabled individual's qualified military service if the individual becomes disabled while performing such service.)

86A. Multiple employer plans

Statement of Requirement: **Code §§ 413(c); 413(e); Reg. §§ 1.413-2(c); Proposed Reg. §§ 1.413-2, 1.413-3**

(Note to reviewer: A Pre-approved Plan may allow for the plan to be adopted as a multiple employer plan, that is, to be adopted as a non-collectively bargained single plan benefitting the employees of two or more employers who are not treated as a single employer under §§ 414(b), (c), (m), or (o). To do this, the plan must include, as an addendum to the adoption agreement, a participation agreement to be signed by any employer that adopts the plan, other than the "lead" employer that signs the adoption agreement. The participation agreement must provide that the participating employer agrees to be bound by the terms of the plan and trust as adopted by the lead employer, including any amendments thereto and any elections made by the lead employer, except to the extent the participation agreement allows for, and the participating employer makes, separate elections with respect to its employees.

The exclusive benefit requirement is applied to a multiple employer plan by treating all employees of all participating employers as if they were the employees of the same employer. In addition, the minimum participation requirements of § 410(a) and the minimum vesting requirements of § 411 are applied as if all participating employers were a single employer, and service for any employer counts as service for all.

The limitations of § 415 (annual additions), § 402(g) (elective deferrals), and § 414(v) (catch-up contributions) are applied to the plan as a whole, rather than on an employer-by-employer basis. Likewise, if a participant is both a 5% owner and an employee of any participating employer in the year the employee reaches the applicable age under § 401(a)(9)(C), then the employee's required beginning date is April 1 of the following year. See LRM #49.

Conversely, the minimum coverage requirements of § 410(b), the nondiscrimination requirements of § 401(a)(4), the determination of top-heavy status and minimum contributions under § 416, and the ADP and ACP tests of §§ 401(k) and 401(m), as well as the determination of highly compensated employees under § 414(q), are applied separately, on an employer-by employer basis.)

(Note to reviewer: For plan years beginning on or before December 31, 2020, a failure in a multiple employer plan with respect to any single employer would result in the entire plan being subject to disqualification. For plan years beginning after December 31, 2020, the SECURE Act of 2019 amended the Code to provide relief from this rule for certain multiple employer plans subject to § 413(e).

The relief is available to a multiple employer defined contribution qualified plan that (1) is maintained by employers which have a common interest other than having adopted the plan, or (2) in the case of a plan not described in (1), has a pooled plan provider (referred to herein as a "pooled provider plan"). To qualify for this relief, § 413(e) of the Code requires that the plan terms must provide that, in the

case of any employer in the plan failing to take required actions (referred to as a "noncompliant employer"):

1. **Plan assets attributable to employees of the noncompliant employer (and their beneficiaries) will be transferred to a plan maintained only by that employer (or its successor), to a tax-favored retirement plan for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of the employees of the noncompliant employer (and beneficiaries of such employees) to retain the assets in the plan, and**

2. **The noncompliant employer (and not the plan with respect to which the failure occurred or any other employer in the plan) is, except to the extent provided by the Secretary, liable for any plan liabilities attributable to employees of the noncompliant employer (or beneficiaries of such employees).**

The terms of a pooled provider plan must designate the pooled plan provider as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions necessary for the plan to meet Code and ERISA requirements.

Proposed Regulations under § 413(e) of the Code were issued March 28, 2022. These proposed regulations provide that the terms of a § 413(e) plan document must:

1. **Include language describing the procedures that will be followed to address a participating employer failure, including a description of the notices that the § 413(e) plan administrator will send in the case of a "participating employer failure,"**

2. **State that the § 413(e) plan administrator will send the first notice (or, if applicable, the combined first and second notice) by specified deadlines that depend on the type of failure,**

3. **Describe the actions that the § 413(e) plan administrator will take if, by the end of the 60-day period following the date the final notice is provided, the unresponsive participating employer does not take appropriate remedial action with respect to the failure or initiate a spinoff of amounts attributable to the employees of the unresponsive participating employer to a separate single-employer plan that is maintained by the employer, and**

4. Provide that if an unresponsive participating employer does not either take appropriate remedial action or initiate a spinoff by that deadline, participants who are employees of the unresponsive participating employer have a nonforfeitable right to the amounts credited to their accounts that are attributable to employment with the unresponsive participating employer, determined in the same manner as if the plan had terminated pursuant to § 411(d)(3).

Sample plan language specific to § 413(e) is not provided. The following sample plan language applies to a plan meeting the requirements of § 413(c).)

Sample plan language:

If elected by the employer in the adoption agreement, the plan may also be adopted, by other employers that are not aggregated with the employer under sections 414(b),(c), (m), or (o) of the Code. Such employers shall adopt the plan by executing a separate participation agreement. In this case, the adopting employer and each participating employer acknowledge that the plan is a multiple employer plan subject to the specific reporting requirements and rules of section 413(c) and the regulations thereunder, regarding the qualified status of the plan.

For purposes of plan participation and vesting, the adopting employer and all participating employers shall be considered a single employer. An employee's service includes all service with the adopting employer or any participating employer (or with any employer aggregated with the adopting or participating employer under sections 414(b), (c), (m), or (o)). An employee who discontinues service with a participating employer but then resumes service with another participating employer shall not be considered to have severed employment.

Except to the extent that the participation agreement allows, and the participating employer makes, separate elections with respect to its employees, the participating employer shall be bound by the terms of the plan and trust, including amendments thereto and any elections made by the adopting employer.

The limitation under the plan relating to the requirements of sections 415, 402(g), and 414(v) of the Code shall be applied to the plan as a whole. The requirements of sections 410(b), 401(a)(4), 401(k)(3)(A)(ii), 401(m)(2)(A), 414(q), and 416 shall be applied separately to each participating employer. For purposes of determining a participant's required beginning date for minimum required distributions, a participant shall be considered a 5 percent owner in a year in which the participant is both a 5 percent owner and an employee of a participating employer.

Sample adoption agreement language:

Does the adopting employer elect to allow the plan to be adopted by other unrelated

employers as a multiple employer plan? (check one)

( ) Yes

( ) No

Participation agreement:

(Note to reviewer: Although no sample language is provided, the participation agreement must identify the participating employer and the covered employees and provide for the participating employer's signature. The participation agreement may, but is not required to, provide separate elections with respect to the employees of the adopting employer. In the case of a Standardized plan, any elections available to a participating employer must be limited to the elections available to the adopting employer. Thus, the minimum coverage requirements of § 410(b) and the nondiscrimination requirements of § 401(a)(4) must be satisfied with respect to the employees of the participating employer regardless of what elections are made in the participation agreement.)

(Note to reviewer: An ESOP cannot be a multiple employer plan. In addition, the withdrawal of a participating employer from a multiple employer plan is not a plan termination which allows distributions to be made to participants in the plan. Instead, a plan termination for distribution purposes occurs when the entire plan terminates. See IRC § 413(c)(3) and Reg. § 1.413-2(a)(3)(iii). Plan provisions cannot provide that upon withdrawal of a participating employer, assets will be distributed as if it were a single employer plan termination. Instead, a withdrawing employer would be required to establish a plan as part of a spinoff transaction within the meaning of Reg. § 1.414(l)-1(b)(4) and transfer assets into it; then, if desired, terminate the spinoff plan.)

PART II - STANDARDIZED PLAN PROVISIONS

87. Coverage

Statement of Requirement: **Code § 410(b); Rev. Proc. 2023-37, sec. 9.03(1)**

Sample Adoption Agreement Language:

Each employee will begin participation under the plan in accordance with section _____, except the following:

( ) Employees who have not attained the age of _____ (cannot exceed 21).

( ) Employees who have not completed year(s) of service (cannot exceed 1 year unless the plan provides a nonforfeitable right to 100% of the participant's account balance derived from employer contributions after not more than 2 years of service in which case up to 2 years is permissible. If the year(s) of service selected is or includes a fractional year, an employee will not be required to complete any specified number of hours of service to receive credit for such fractional year.)

( ) Employees included in a unit of employees covered by a collective bargaining agreement between the employer and employee representatives, if retirement benefits were the subject of good faith bargaining and if two percent or less of the employees who are covered pursuant to that agreement are professionals as defined in section 1.410(b)-9 of the Regulations. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the employer.

( ) Employees who are nonresident aliens (within the meaning of section 7701(b)(1)(B) of the Code) and who receive no earned income (within the meaning of section 911(d)(2) of the Code) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3) of the Code).

( ) Employees who became Employees as the result of a transaction described in section 410(b)(6)(C) of the Code. These Employees will be excluded during the period beginning on the date of the transaction and ending on a date that is not later than the earlier of the last day of the first Plan Year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan.

(Note to reviewer: A transaction described in IRC § 410(b)(6)(C) is an asset or stock acquisition, merger, or similar transaction involving a change in the employer of the employees of a trade or business.)

(Note to reviewer: The first blank should be filled in with the section number that corresponds to LRM #18. If the plan provides for a single annual entry date reduce each of the limits contained in the sample provision above by ½ year (for example, change age 21 to 20½, 1 year to ½ year and 2 years to 1½ years). This reduction can be avoided if the employee enters the plan on the entry date nearest the date the employee completes the eligibility requirement, and the entry date is the first day of the plan year.)

88. Eligibility requirements not more favorable for highly compensated

Statement of Requirement: **Reg. § 1.401(a)(4)-4; Rev. Proc. 2023-37, sec. 9.03(2)**

(Note to reviewer: In addition, all optional forms of benefit, ancillary benefits and other rights and features provided under the plan must be made available to all participants.)

89. Contribution / Allocation formula

Statement of Requirement: **Reg. § 1.401(a)(4)-2(b)(2); Rev. Proc. 2023-37, sec. 9.03(3) and (4)**

(Note to reviewer: Standardized plans must satisfy the safe harbor contained in Reg. § 1.401(a)(4)-2(b)(2). Therefore, except for employer matching contributions or contributions made under a cash or deferred arrangement as defined in § 401(k) of the Code, a Standardized plan must provide that contributions, forfeitures, and/or benefits must be a uniform percentage of compensation, excluding compensation in excess of the limitation under § 401(a)(17) (see LRM #6 for the definition of compensation). However, a plan may allow for permitted disparity pursuant to Code § 401(l) and the regulations thereunder. See LRM #29 for sample language.)

(Note to reviewer: No § 401(a)(4) failsafe language is allowed. The plan must pass nondiscrimination testing based on Reg. § 1.401(a)(4)-1 through § 1.401(a)(4)-13. Provisions attempting to provide a § 401(a)(4) failsafe are not permitted in Pre-Approved Plans.)

90. Reliance on Opinion Letter

Statement of Requirement: **Rev. Proc. 2023-37, sec. 12.01.**

(Note to reviewer: This sample language, or a similar provision, must appear in all standardized plans in close proximity to the employer's signature line.)

Sample Adoption Agreement Language:

The adopting employer may rely on an Opinion Letter issued by the Internal Revenue Service as evidence that the plan is qualified under section 401 of the Internal Revenue Code except to the extent provided in Rev. Proc. 2023-37.

An employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in section 419(e) of the Code, which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in section 419A(d)(3) of the Code, or an individual medical account, as defined in section 415(l)(2) of the Code) in addition to this plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of sections 415 and 416 of the Code.

The employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the plan or in Rev. Proc. 2023-37.

This adoption agreement may be used only in conjunction with basic plan document # _____.

PART III - NONSTANDARDIZED PLAN PROVISIONS

91. Minimum age and service

Statement of Requirement: **Code § 410(a)(1)(A); Reg. § 1.410(a)-3(a)**

Sample Adoption Agreement Language:

Each employee will be eligible to participate in the plan upon meeting the following eligibility requirements:

(1) Attained the age of _____ (cannot exceed 21)

(2) Completed _____ year(s) of service (Cannot exceed 1 year, unless the plan provides a nonforfeitable right to 100% of the participant's account balance after not more than 2 years of service in which case up to 2 years is permitted. If the year(s) of service selected is or includes a fractional year, an employee will not be required to complete any specified number of hours of service to receive credit for such fractional year.)

(Note to reviewer: If the plan provides for a single annual entry date reduce each of the limits contained in the sample provision above by ½ year (i.e., change age 21 to 20½, 1 year to ½ year and 2 years to 1½ years). This reduction can be avoided if the employee enters the plan on the entry date nearest the date the employee completes the eligibility requirement, and the entry date is the first day of the plan year.)

(Note to reviewer: IRC § 410(a) provides the minimum age and service requirements applicable to plans, generally requiring that no more than one year of service can be required for eligibility. However, § 410(a)(1)(B)(iii) allows a plan to require up to two years of service for eligibility if a participant's right to his or her accrued benefit under the plan is completely nonforfeitable after entry. Thus, any eligibility condition requiring more than one year of service (but no more than two) would require full and immediate vesting.)

(Note to reviewer: A nonstandardized plan may exclude additional categories of employees from participation; however, the plan must satisfy on a continuing basis the coverage tests of § 410(b) and the nondiscrimination tests of § 401(a)(4).)

92. Reliance on Opinion Letter

Statement of Requirement: **Rev. Proc. 2023-37, sec. 12.02,**

(Note to reviewer: This sample language, or a similar provision, must appear in all nonstandardized plans in close proximity to the employer's signature line.)

Sample Adoption Agreement Language:

The adopting employer may rely on an Opinion Letter issued by the Internal Revenue Service as evidence that the plan is qualified under section 401 of the Internal Revenue Code only to the extent provided in Rev. Proc. 2023-37.

The employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the plan and in Rev. Proc. 2023-37.

This adoption agreement may be used only in conjunction with basic plan document # _____.

93. Election of total compensation

Statement of Requirement: **Rev. Proc. 2023-37, sec. 9.03(3)**

(Note to reviewer: The plan and/or adoption agreement may allow the employer the option to select total compensation as the compensation to be used in determining benefits. See LRM #6 for the acceptable definitions of compensation.)

94. Profit-sharing plan – Cross-tested allocation formula

Statement of Requirement: **Reg. § 1.401(a)(4)-8(b); Rev. Proc. 2023-37, sec. 12.02**

Sample Plan Language:

As elected by the employer in the adoption agreement, the employer will determine the total amount of contributions for each plan year and either (1) allocate such total amount to participant groups (the "Participant Group Allocation Method"), or (2) allocate such total amount using age weighted allocation rates (the "Age Weighted Allocation Method"). Employer contributions will be allocated to each eligible employee.

Participant Group Allocation Method. If the employer has elected the Participant Group Allocation Method in the adoption agreement, then, for purposes of determining the amount of employer contributions to be allocated to employees' accounts, each eligible

employee of the employer will be included in a participant allocation group, as provided in the adoption agreement.

The employer will specify in written instructions to the plan administrator or trustee, by no later than the due date of the employer's tax return for the year to which the employer's contribution relates, the portion of such contribution to be allocated to each participant allocation group. The employer contributions allocated to each participant allocation group will be allocated among the employees in that group in the ratio that each employee's compensation, as defined in section _____ of the plan, bears to the total compensation of all employees in the group. In the event that an eligible employee is included in more than one participant allocation group, the participant's share of the employer contribution allocated to each such group will be based on the participant's compensation for the part of the year the participant was in the group.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

Age Weighted Allocation Method. If the Age Weighted Allocation Method is elected in the adoption agreement, the total employer contribution will be allocated to each eligible employee such that the equivalent benefit accrual rate for each participant is identical. The equivalent benefit accrual rate is the annual annuity commencing at the participant's testing age, expressed as a percentage of the participant's compensation as defined in section _____ of the plan which is provided from the allocation of employer contributions and forfeitures for the plan year, using standardized actuarial assumptions that satisfy section1.401(a)(4)-12 of the Regulations. The employee's testing age is the later of normal retirement age, or the employee's current age.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

Minimum allocation gateway. Any allocation of contributions under either the Participant Group Allocation Method or the Age Weighted Allocation Method must satisfy the minimum allocation gateway:

Each benefiting NHCE must have an allocation rate that is not less than the lesser of 5%, or one-third of the allocation rate of the HCE with the highest allocation rate. An allocation rate is the amount of contributions allocated to an employee for a year, expressed as a percentage of compensation, as defined in section _____ of the plan.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to Option B in the Sample Adoption Agreement language in LRM #31.)

(Note to reviewer: There are other gateways that may be used in order for a defined contribution plan to cross-test using equivalent benefits under Reg. § 1.401(a)(4)-8(b). The plan may provide for a different gateway other than the minimum allocation gateway (for instance, the broadly available allocation rate requirement of Reg. § 1.401(a)(4)-8(b)(1)(iii) or the gradual age or service-based allocation rate requirement of Reg. § 1.401(a)(4)-8(b)(1)(iv)); however, sample language for other gateways is not provided herein. If a Provider wishes to use other gateways, it is important to ensure that the benefits provided under the plan remain definitely determinable. For plan benefits to remain definitely determinable, the plan document should specify which gateway is used. The plan document could allow adopting employers to elect between different gateways, but to provide definitely determinable benefits; it is not sufficient for the plan document merely to specify that one of the gateway requirements will be satisfied.)

(Note to reviewer: No § 401(a)(4) failsafe language is allowed in any Pre-approved Plan document. The plan must pass nondiscrimination testing operationally based on Regs. § 1.401(a)(4)-1 through § 1.401(a)(4)-13.)

Sample Adoption Agreement Language:

( ) Employer contributions will be allocated under the following method (select one)

A. ( ) Participant Group Allocation

Each eligible employee is assigned to a participant allocation group, as follows:

(DESCRIBE THE OBJECTIVE CRITERIA FOR DETERMINING THE MAKE-UP OF EACH PARTICIPANT ALLOCATION GROUP. CRITERIA MAY NOT BE SUBJECT TO EMPLOYER DISCRETION, WHICH WOULD CAUSE THE PLAN TO FAIL TO HAVE A DEFINITE ALLOCATION FORMULA.)

In the case of self-employed individuals (i.e., sole proprietorships or partnerships), the requirements of section 1.401(k)-1(a)(6) of the regulations continue to apply, and the allocation method, including the determination of participant allocation groups, should not be such that a cash or deferred election is created for a self-employed individual as a result of application of the allocation method.

The plan's eligibility provisions, and participant allocation groups may not be structured to limit participation to only the shortest service and lowest paid NHCEs while excluding the other NHCEs.)

B. ( ) Age Weighted Allocation

The following assumptions will be used to calculate the equivalent benefit accrual rate:

Pre-retirement Mortality _____

Post-retirement Mortality _____

Pre-retirement Interest _____

Post-retirement Interest _____

(Note to reviewer: Standard interest rate and standard mortality table assumptions in accordance with Reg. § 1.401(a)(4)-12 must be used when testing the plan for satisfaction of nondiscrimination requirements. A table of age-weighted factors (that comply with the previous sentence) may also be used.)

95. Contribution / Allocation formula

Statement of Requirement: **Reg. §§ 1.401(a)(4)-2(b)(2) and 1.401(a)(4)-2(b)(3); Rev. Proc. 2023-37, sec. 12.02(4)**

Document Provision: _____

(Note to reviewer: Nonstandardized plans may automatically, or by an option, satisfy the safe harbor contained in Reg. § 1.401(a)(4)-2(b)(2) (regarding plans with a uniform allocation formula which may or may not impute permitted disparity) and/or Reg. § 1.401(a)(4)-2(b)(3) (regarding plans with a uniform points allocation formula). Compensation for this purpose cannot exceed the limitation under § 401(a)(17) (see LRM #6 for the definition of compensation). As noted, plan provisions may allow for permitted disparity pursuant to Code § 401(l) and the regulations thereunder. See LRM #29 for sample language in this regard.)

(Note to reviewer: No § 401(a)(4) failsafe language is allowed in any Pre-approved Plan document. The plan must pass nondiscrimination testing operationally based on Regs. § 1.401(a)(4)-1 through § 1.401(a)(4)-13.)

End of DC LRMs